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CHAPTER 1

GENERAL PROVISIONS

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Part 1

Definitions

20-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Agricultural experiment station" means the agricultural experiment station established at Montana state university.

(2) "Average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending the public schools of a district.

(3) "The board of public education" is the board created by Article X, section 9, subsection (3), of the 1972 Montana constitution and 2-15-1507.

(4) "Board of regents" means the board of regents of higher education created by Article X, section 9, subsection (2), of the 1972 Montana constitution and 2-15-1505.

(5) "Commissioner" means the commissioner of higher education created by Article X, section 9, subsection (2), of the 1972 Montana constitution and 2-15-1506.

(6) "County superintendent" means the county government official who is the school officer of the county.

(7) "District superintendent" means any person who holds a valid class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(8) "K-12 vocational education" means vocational education in public school kindergarten through grade 12.

(9) "Principal" means any person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a principal. For the purposes of this title, any reference to a teacher shall be construed as including a principal, as herein defined.

(10) "Pupil" means any child who is 6 years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled

by special permission of the board of trustees under 20-5-101(3) but has not yet reached his 19th birthday and who is enrolled in a school established and maintained under the laws of the state of Montana at public expense. For purposes of calculating the average number belonging (ANB) pursuant to 20-9-311, the definition of pupil includes a person who has not yet reached his 19th birthday by September 10 of the year and is enrolled under 20-5-101(3) in a school established and maintained under the laws of the state at public expense.

(11) "Pupil instruction" means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

(12) "Regents" means the board of regents of higher education.

(13) "School food services" means a service of providing food for the pupils of a district on a nonprofit basis and shall include any food service financially assisted through funds or commodities provided by the United States government.

(14) "The state board of education" is the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1), of the 1972 Montana constitution.

(15) "State university" means the Montana state university, located at Bozeman.

(16) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the constitution of Montana.

(17) "System" means the Montana university system.

(18) "Teacher" means any person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher shall also include any person for whom an emergency authorization of employment of such person has been issued under the provisions of 20-4-111.

(19) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

(20) "Textbook dealer" means any party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state of Montana.

(21) "Trustees" means the governing board of a district.

(22) "University" means the university of Montana, located at Missoula.

(23) "Vocational education" means the instruction to prepare or improve the pupil for gainful employment that does not require a baccalaureate or higher degree. This definition of vocational education shall include guidance and prevocational, related, or technical instruction necessary to prepare the pupil for further vocational education or for entry into employment.

(24) "Vocational-technical center" means an institution used principally for the provision of vocational-technical education to persons who qualify as vocational-technical students. These centers are designated by the board of regents upon direction by the legislature. All other public or private institutions or schools are hereby prohibited from using this title.

(25) "Vocational-technical education" means vocational-technical education of vocational-technical students that is conducted by a vocational-technical center, a unit of the Montana university system, or a community college as designated by the board of regents.

History: (1), (14), (17), (19), (24)En. 75-8402 by Sec. 2, Ch. 2, L. 1971; Sec. 75-8402, R.C.M. 1947; (2)En. 75-6902 by Sec. 252, Ch. 5, L. 1971; amd. Sec. 1, Ch. 345, L. 1973; amd. Sec. 1, Ch. 343, L. 1974; amd. Sec. 3, Ch. 352, L. 1974; amd. Sec. 1, Ch. 373, L. 1974; amd. Sec. 1, Ch. 132, L. 1975; Sec. 75-6902, R.C.M. 1947; (3) thru (5), (16)En. Sec. 1, Ch. 344, L. 1973; Sec. 75-5609, R.C.M. 1947; (6)En. 75-5801 by Sec. 19, Ch. 5, L. 1971; amd. Sec. 28, Ch. 100, L. 1973; Sec. 75-5801, R.C.M. 1947; (7), (11), (20)En. 75-6101 by Sec. 82, Ch. 5, L. 1971; Sec. 75-6101, R.C.M. 1947; (8) thru (10), (25)En. Sec. 404, Ch. 5, L. 1971; (amd. Sec. 4, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 4, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); Sec. 75-7701, R.C.M. 1947; (12)En. 75-6301 by Sec. 114, Ch. 5, L. 1971; Sec. 75-6301, R.C.M. 1947; (13)En. 75-7401 by Sec. 365, Ch. 5, L. 1971; Sec. 75-7401, R.C.M. 1947; (15)En. 75-8001 by Sec. 442, Ch. 5, L. 1971; Sec. 75-8001, R.C.M. 1947; (18)En. 75-5701 by Sec. 10, Ch. 5, L. 1971; amd. Sec. 27, Ch. 100, L. 1973; Sec. 75-5701, R.C.M. 1947; (21), (22)En. 75-7601 by Sec. 393, Ch. 5, L. 1971; Sec. 75-7601, R.C.M. 1947; (23)En. 75-5901 by Sec. 30, Ch. 5, L. 1971; Sec. 75-5901, R.C.M. 1947; R.C.M. 1947, 75-5609, 75-5701, 75-5801, 75-5901(part), 75-6101, 75-6301, 75-6902(part), 75-7401, 75-7601, 75-7701, 75-8001, 75-8402; amd. Sec. 1, Ch. 334, L. 1979; amd. Sec. 1, Ch. 558, L. 1979; amd. Sec. 8, Ch. 598, L. 1979; amd. Sec. 1, Ch. 388, L. 1987; amd. Sec. 7, Ch. 658, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 388 in definition of pupil inserted last sentence referring to ANB calculation.

Chapter 658 inserted definitions of K-12 vocational education, vocational-technical center, and vocational-technical education; and deleted definitions of postsecondary vocational-technical center, postsecondary vocational-technical education, and postsecondary vocational-technical pupil.

Part 2

Miscellaneous Provisions

20-1-201. School officers not to act as agents. The superintendent of public instruction or members of his staff, county superintendent or members of his staff, trustee, or district employee shall not act as an agent or solicitor in the sale or supply of goods or services to a district. No such person shall assist or receive a reward from an agent or solicitor of goods or services for a district. Any such person violating this section shall be deemed guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than $50 or more than $200 and shall be liable to removal from his position. The penalties provided by this section shall not be applicable if the charge and conviction are made under the provisions of 20-7-608.

History: En. 75-8303 by Sec. 487, Ch. 5, L. 1971; R.C.M. 1947, 75-8303.

Cross-References

Code of ethics, Title 2, ch. 2, part 1.

Proscribed acts related to contracts and claims, Title 2, ch. 2, part 2.

Textbook sales regulation, Title 20, ch. 7, part 6.

Deceptive business practices, 45-6-317, 45-6-318.

20-1-202. Oath of office. Any person elected or appointed to any public office authorized by this title shall take the oath of office before qualifying for and assuming the office. In case an officer has a written appointment or commission, his oath shall be endorsed thereon, otherwise it may be taken orally, and, in either case, it may, without charge or fee, be sworn to before an officer authorized to administer oaths for such public office.

History: En. 75-8304 by Sec. 488, Ch. 5, L. 1971; R.C.M. 1947, 75-8304.

Cross-References
Oath of office, Art. III, sec. 3, Mont. Const.
Oath defined, 1-1-201.
Declaration in lieu of oath, 1-6-104.
Oath of Board of Regents, 2-15-1508.
Oath of Superintendent of Public Instruction and Deputy, 20-3-102, 20-3-103.
Oath of County Superintendent of Schools, 20-3-202.
County Superintendent's power to administer oath to trustees, 20-3-205.
Oath of school trustees, 20-3-307, 20-3-309.
Teachers' oath, 20-4-104.
Oaths of community college district trustees, 20-15-210, 20-15-222.

20-1-203. Delivering items to successor. Whenever any member of the trustees, superintendent, principal, or clerk of the district is replaced by election or otherwise, he shall immediately deliver all books, papers, and moneys pertaining to the position to his successor. Any such person who shall refuse to do so or who shall willfully destroy any such material or misappropriate any moneys entrusted to him shall be guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not more than $100.

History: En. 75-5926 by Sec. 55, Ch. 5, L. 1971; R.C.M. 1947, 75-5926.

Cross-References
Personal liability of trustees, 20-3-332.
Destruction of public property, 45-6-101.

20-1-204. County attorney's duties. Upon request of the county superintendent or the trustees of any school district or community college district, the county attorney shall be their legal adviser and shall prosecute and defend all suits to which such persons, in their capacity as public officials, may be a party; however, the trustees of any school district or community college district may, in their discretion, employ any other attorney licensed in Montana to perform any legal services in connection with school or community college board business.

History: En. 75-8305 by Sec. 489, Ch. 5, L. 1971; amd. Sec. 2, Ch. 263, L. 1971; amd. Sec. 1, Ch. 22, L. 1974; amd. Sec. 6, Ch. 121, L. 1977; R.C.M. 1947, 75-8305; amd. Sec. 1, Ch. 273, L. 1979.

Cross-References
Office of County Attorney, Title 7, ch. 4, part 27.
County Attorney to assist in school district bond proceedings, 20-9-436.

20-1-205. Conflict of interest. In the event there should arise a conflict of interest relating solely to the performance of the official duties of the county attorney and which does not relate to a conflict of interest involving the private employment of the county attorney, the trustees of any school district shall employ any other attorney licensed in Montana.

History: En. Sec. 2, Ch. 22, L. 1974; R.C.M. 1947, 75-8305.1.

Cross-References
Limitation on activities of County Attorneys and Deputies, 7-4-2704.
Conflicts of interest, letting contracts, and calling for bids, 20-9-204.

20-1-206. Disturbance of school — penalty. Any person who shall willfully disturb any school or any school meeting shall be deemed guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than $10 or more than $100.

History: En. 75-8306 by Sec. 490, Ch. 5, L. 1971; R.C.M. 1947, 75-8306.

Cross-References
Duties of pupils — sanctions, 20-5-201.
Disrupting of public meeting, 45-8-101.

20-1-207. Penalty for violation of school laws. Unless otherwise specifically provided by law, any person who violates any provision of this title is guilty of a misdemeanor and if convicted by a court of competent jurisdiction shall be punished by a fine of not less than $20 or more than $200 or by imprisonment in the county jail for not less than 5 days or more than 30 days or by both such fine and imprisonment.

History: En. 75-8307 by Sec. 491, Ch. 5, L. 1971; amd. Sec. 29, Ch. 266, L. 1977; R.C.M. 1947, 75-8307.

Cross-References

Fines and penalties proceeds for elementary county equalization, 20-9-332.

Official misconduct, 45-7-401.

20-1-208. Educational impact statements. When a county superintendent of schools finds that a person intends to construct or locate a major industrial facility, as defined in 20-9-407, or intends to open a new strip mine, as defined by 82-4-103, within the county, the superintendent may require such person to file with the county an educational impact statement. An educational impact statement is a report estimating the increased demands on public schools in the county as a consequence of the major industrial facility or strip mine. The statement shall indicate:

(1) the number of persons to be employed during the construction or preparation and during the operation of the major industrial facility or strip mine and their anticipated residential distribution;

(2) the number and anticipated distribution of persons employed in providing goods and services to the persons enumerated in the preceding category;

(3) the number of school age children anticipated to be living with the persons enumerated in the preceding categories; and

(4) the time periods covered by each preceding estimate.

History: En. 75-8312 by Sec. 1, Ch. 119, L. 1975; amd. Sec. 30, Ch. 266, L. 1977; R.C.M. 1947, 75-8312.

Cross-References

Taxation of major new industrial facility in school district, 20-9-407.

Major facility siting, Title 75, ch. 20.

Strip and underground mine siting, Title 82, ch. 4, part 1.

20-1-209. Judicial enforcement. A district court, upon petition of a county, may enforce 20-1-208 with appropriate orders.

History: En. 75-8313 by Sec. 2, Ch. 119, L. 1975; R.C.M. 1947, 75-8313.

Cross-References

Uniform Declaratory Judgments Act, Title 27, ch. 8.

Injunctions, Title 27, ch. 19.

20-1-210. Nonfaculty coaches in private high schools. (1) A private or parochial high school is not bound by any rule or policy which prohibits the employment or association of part-time assistant athletic instructors with a high school who are not members of the regular faculty of the school, and no such school may be denied the privilege of participating in interscholastic competition with any school in this state because of the employment or association of such assistant athletic instructors with that school.

(2) Upon the complaint of an interested person, a district court may enjoin any association or combination of high schools from conspiring to violate this section or acting in concert in violation thereof.

History: En. 75-8314 by Sec. 1, Ch. 350, L. 1977; R.C.M. 1947, 75-8314.

Cross-References
Injunctions, Title 27, ch. 19.
Athletic event officials excluded from workers' compensation coverage, 39-71-401.

20-1-211. Expenses of officers or employees attending conventions — educational associations. (1) After July 1, 1921, no school district officer or employee of any school district shall receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance upon any convention, meeting, or other gathering of public officers except for attendance upon such convention, meeting, or other gatherings as said officer or employee may by virtue of his office find it necessary to attend.

(2) The board of trustees of any county or district high school or of any school district may by resolution adopted by a majority of the entire board make their district a member of any state association of school districts or school district trustees or any other strictly educational association and authorize the payment of dues to such association and the necessary traveling expenses of employees or members of said board to attend meetings of such association or other meetings called for the express purpose of considering educational matters.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(part).

Cross-References
Trustee travel reimbursement and compensation of secretary, 20-3-311.
Attendance at state teachers' association annual session, 20-4-304.

20-1-212. Destruction of old records by officer. (1) Unless destruction may be otherwise required by federal law, a school officer may destroy old worthless reports, papers, or records in his office:

(a) that have served their purpose and that are substantiated by permanent records, upon the order of the board of trustees and with the approval of the department of commerce; and

(b) after a retention period of 5 years.

(2) For the purposes of subsection (1), old worthless reports, papers, or records do not include student records and records of employment. Such records or copies of such records must be permanently kept.

History: En. Sec. 2, Ch. 92, L. 1935; re-en. Sec. 455.2, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1967; amd. Sec. 79, Ch. 348, L. 1974; amd. Sec. 36, Ch. 213, L. 1975; R.C.M. 1947, 59-514(2); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 543, L. 1983.

Cross-References
Destruction of certain financial records, 20-9-215.

Part 3

School Terms and Holidays — Released Time

20-1-301. School fiscal year. The school fiscal year shall begin on July 1 and end on June 30. At least 180 school days of pupil instruction shall be conducted during each school fiscal year, except that 175 days of pupil instruction for graduating seniors may be sufficient as provided in 20-9-313, or unless a variance for kindergarten has been granted under 20-1-302 or a district is granted a variance under the provisions of chapter 9, part 8, of this title. For any elementary or high school district that fails to provide for at least 180 school days of pupil instruction, the superintendent of public instruction shall reduce the county equalization as defined in 20-9-334 and the state equalization as defined in 20-9-343 for the district for that school year by 1/90th for each school day less than 180 school days.

History: En. 75-7402 by Sec. 366, Ch. 5, L. 1971; amd. Sec. 2, Ch. 373, L. 1974; R.C.M. 1947, 75-7402; amd. Sec. 6, Ch. 288, L. 1979; amd. Sec. 1, Ch. 148, L. 1981; amd. Sec. 1, Ch. 460, L. 1983.

Cross-References

Management of school funds by County Treasurer, 7-6-2801.

Elementary district abandonment, 20-6-209.

High school district abandonment, 20-6-307.

Apportionment of county equalization money by County Superintendent, 20-9-334.

Formula for apportionment of county equalization money, 20-9-335.

Emergency school closure, Title 20, ch. 9, part 8.

20-1-302. School day and week. Subject to 20-1-308, a school day of pupil instruction shall be at least 2 hours for kindergartens and all other preschool programs, unless a variance has been granted by the superintendent of public instruction in accordance with the policies of the board of public education, at least 4 hours for grades 1 through 3, and at least 6 hours for grades 4 through 12. The number of hours in any one school day for grades 4 through 12 may be reduced by 1 hour if the total number of hours in the school week is not less than 30 hours. The number of hours in a school week may be reduced, in an emergency, with the approval of the board of public education.

History: En. 75-7403 by Sec. 367, Ch. 5, L. 1971; amd. Sec. 1, Ch. 417, L. 1973; amd. Sec. 3, Ch. 373, L. 1974; amd. Sec. 1, Ch. 130, L. 1977; R.C.M. 1947, 75-7403.

Cross-References

Duty of Board of Public Education to approve school day, 20-2-121(5).

Calculation of average number belonging if variance granted, 20-9-311.

20-1-303. Conduct of school on Saturday or Sunday prohibited — exception. Except as provided, pupil instruction shall not be conducted on Saturday or Sunday. In emergencies, pupil instruction may be conducted on a Saturday when it is approved by the superintendent of public instruction in accordance with the policies adopted by the board of public education.

History: En. 75-7404 by Sec. 368, Ch. 5, L. 1971; R.C.M. 1947, 75-7404.

Cross-References

Duty of Board of Public Education to adopt policy regarding school on Saturdays, 20-2-121(6).

Power of Superintendent of Public Instruction to approve school on Saturdays, 20-3-106(22).

20-1-304. Pupil-instruction-related day. A pupil-instruction-related day shall be a day of teacher activities devoted to improving the quality of instruction. Such activities may include but are not limited to in-service training, attending state meetings of teacher organizations, and conducting parent conferences. A maximum of 7 pupil-instruction-related days may be conducted during a school year, provided that such days are approved by the superintendent of public instruction in accordance with the policy adopted by the board of public education. Such days shall not be included as a part of the required minimum of 180 days of pupil instruction.

History: En. 75-7405 by Sec. 369, Ch. 5, L. 1971; R.C.M. 1947, 75-7405.

Cross-References

Duty of Board of Public Education to adopt policy on pupil-instruction-related days, 20-2-121(6).

Power of Superintendent of Public Instruction to approve school on pupil-instruction-related days, 20-3-106(22).

Attendance at state teachers' association annual session, 20-4-304.

Instructional assistance by Superintendent of Public Instruction, 20-7-114.

School closure by declaration of emergency, 20-9-806.

20-1-305. School holidays. (1) Pupil instruction and pupil-instruction-related days shall not be conducted on the following holidays:

(a) New Year's Day (January 1);
(b) Memorial Day (last Monday in May);
(c) Independence Day (July 4);
(d) Labor Day (first Monday in September);
(e) Thanksgiving Day (fourth Thursday in November);
(f) Christmas Day (December 25);
(g) State and national election days when the school building is used as a polling place and the conduct of school would interfere with the election process at the polling place.

(2) When these holidays fall on Saturday or Sunday, the preceding Friday or the succeeding Monday shall not be a school holiday.

History: En. 75-7406 by Sec. 370, Ch. 5, L. 1971; amd. Sec. 1, Ch. 159, L. 1974; R.C.M. 1947, 75-7406.

Cross-References

Legal holidays, 1-1-216.

Teacher contract not to require teaching on school holidays, 20-4-201.

20-1-306. Commemorative exercises on certain days. (1) All districts shall conduct appropriate exercises during the school day on the following commemorative days:

(a) Lincoln's Birthday (February 12);
(b) Washington's Birthday (February 22);
(c) Arbor Day (last Friday in April);
(d) Flag Day (June 14);
(e) Citizenship Day (September 17);
(f) Columbus Day (October 12);
(g) Pioneer Day (November 1);
(h) Other days designated by the legislature or governor as legal holidays.

(2) When these commemorative days fall on Saturday or Sunday, exercises may be conducted the preceding Friday.

History: En. 75-7407 by Sec. 371, Ch. 5, L. 1971; R.C.M. 1947, 75-7407.

Cross-References

Legal holidays, 1-1-216.

20-1-307. Provisions of school code excepted. Nothing contained in 1-1-216 defining legal holidays shall be deemed to amend or change the provisions of 20-1-305 and 20-1-306, said sections being hereby expressly declared to define legal holidays for school purposes only.

History: En. Sec. 2, Ch. 21, L. 1921; re-en. Sec. 11, R.C.M. 1921; re-en. Sec. 11, R.C.M. 1935; amd. Sec. 1, Ch. 240, L. 1975; R.C.M. 19-108.

20-1-308. Religious instruction released time program. (1) The trustees of an elementary or high school district may provide for a religious instruction released time program under which a pupil may be released from regular school attendance for a period not to exceed 2 hours per week for the purpose of receiving religious instruction upon written request, renewed at least annually, of the pupil's parent or guardian.

(2) No religious instruction released time program may be established or administered in such a way that public school property is utilized for the purpose of religious instruction.

(3) No public moneys may be used, directly or indirectly, for such religious instruction.

(4) Any period for which a pupil is released under a religious instruction released time program is part of the school day and week for purposes of 20-1-301, 20-1-302, 20-5-103, 20-9-311, and all other provisions of Title 20, and such release may not adversely affect the pupil's attendance record.

History: **En. 75-7403.1 by Sec. 2, Ch. 130, L. 1977; R.C.M. 1947, 75-7403.1.**

Cross-References

Equal protection of laws guaranteed, Art. II, sec. 4, Mont. Const.

No appropriation to be made for religious purposes, Art. V. sec. 11, Mont. Const.

Discrimination in education prohibited, Art. X, sec. 7, Mont. Const.

Sectarian publications prohibited and prayer permitted, 20-7-112.

Part 4

Fire Drills and Safety Patrols

20-1-401. Fire drills to be conducted regularly. Fire exit drills shall be conducted regularly in accordance with the applicable provisions of the following sections.

History: **En. 75-8308.1 by Sec. 1, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.1.**

20-1-402. Number of fire drills required — avoiding severe cold weather. There shall be at least eight fire exit drills a year in schools. In climates where the weather is severe during the winter months, weekly drills should be held at the beginning of the school term to complete the required number of drills before cold weather so as not to endanger the health of the pupils.

History: **En. Sec. 2, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.2.**

20-1-403. Times of drills to vary. Drills shall be executed at different hours of the day or evening, during the changing of classes, when the school is at assembly, during the recess or gymnastic periods, etc., so as to avoid distinction between drills and actual fires.

History: **En. Sec. 3, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.3.**

20-1-404. Drill to sound on fire alarm system. All fire exit drill alarms shall be sounded on the fire alarm system and not on the signal system used to dismiss classes.

History: **En. Sec. 4, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.4.**

20-1-405. Fire department to be called for actual fire. Whenever any of the school authorities determine that an actual fire exists, they shall immediately call the local fire department using the public fire alarm system or such other facilities as are available.

History: **En. Sec. 5, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.5.**

20-1-406. Recall signal to be distinct — control of signal. The recall signal shall be one that is separate and distinct from and cannot be mistaken for any other signals. Such signals may be given by distinctive colored flags or banners. If the recall signal is electrical, the push buttons or other controls shall be kept under lock, the key for which shall be in the possession of the principal or some other designated person in order to prevent a recall at a time when there is a fire. Regardless of the method of recall, the means of giving the signal shall be kept under a lock.

History: **En. Sec. 6, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.6.**

20-1-407. Inspection of exits — cooperation with fire department in drills. It shall be the duty of the school authorities to inspect all exit facilities periodically, in order to make sure that all stairways, doors, and other exits are in proper condition, and cooperate with local fire department authorities in conducting fire drills.

History: **En. Sec. 7, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.7.**

20-1-408. School safety patrols. (1) The trustees of any district or the administration of any private school may organize and supervise school safety patrols for a school under their authority. The purpose of school safety patrols is to influence and encourage other pupils of the school to refrain from crossing public highways at points other than regular crossings and to direct pupils as to when and where to cross highways.

(2) The school safety patrol shall be formed from the children of the school who are 9 years of age or more or, if there are none, who are of the highest grade of such school. Before any child may serve on the school safety patrol, the parent or guardian of such child shall give written consent for his child to serve on the school safety patrol.

(3) No liability attaches to a member of the school safety patrol or parent or guardian by virtue of the organization, maintenance, or operation of such school safety patrol because of injury sustained by any pupil.

(4) Identification and operation of school safety patrols shall be uniform throughout the state, and the method of identification and signals to be used shall be as prescribed by the superintendent of public instruction in cooperation with the Montana department of justice.

(5) Any municipality, city, or town of this state may provide for the training of members of the school safety patrol at any authorized school patrol camp located in this state and may pay the expense necessarily incurred in providing such training out of any funds available for such purpose.

History: **En. 75-8310 by Sec. 494, Ch. 5, L. 1971; amd. Sec. 7, Ch. 234, L. 1977; R.C.M. 1947, 75-8310.**

Cross-References

Duty of Superintendent of Public Instruction to prescribe identification and signals for safety patrols, 20-3-106(34).

Traffic education, Title 20, ch. 7, part 5.

Violation of safety patrol signals, 61-8-502.

CHAPTER 2

STATE BOARDS AND COMMISSIONS

Part 1 — State Board of Education—Board of Public Education—Board of Regents

20-2-101. Combined boards as state board — budget review — officers — meetings — quorum.
20-2-102 through 20-2-110 reserved.
20-2-111. Officers of boards — quorum.
20-2-112. Quarterly meetings of boards — called meetings — notice of meetings.
20-2-113. Per diem of board members — expenses.
20-2-114. Adoption of rules — seal — record of proceedings.
20-2-115. Rules with substantial financial impact — fiscal note — effect without funding.
20-2-116 through 20-2-120 reserved.
20-2-121. Board of public education — powers and duties.
20-2-122. Executive secretary to board of public education — staff.
20-2-123 through 20-2-130 reserved.
20-2-131. Commissioner of higher education — duties — compensation — staff.

Parts 2 and 3 reserved

Part 4 — Commission on Federal Higher Education Programs

20-2-401. Definition.
20-2-402. Purpose.
20-2-403. Duties.

Part 1

State Board of Education — Board of Public Education — Board of Regents

Part Cross-References

Boards of Education created — duties, Art. X, sec. 9, Mont. Const.; Title 2, ch. 15, part 15.

20-2-101. Combined boards as state board — budget review — officers — meetings — quorum. (1) The board of public education and the board of regents meeting together as the state board of education shall be responsible for long-range planning and for coordinating and evaluating policies and programs for the public educational systems of the state. The state board of education shall review and unify the budget requests of educational entities assigned by law to the board of public education, the board of regents, or the state board of education and shall submit a unified budget request with recommendations to the appropriate state agency.

(2) The governor is the president of, the superintendent of public instruction is the secretary to, and the commissioner shall be a nonvoting participant at all meetings of the state board of education.

(3) The state board of education may select a member to chair its meetings in the absence of the governor.

(4) A tie vote at any meeting may be broken by the governor.

(5) A majority of members appointed to the board of public education and the board of regents shall constitute a quorum for transaction of business as the state board of education.

(6) The board of public education and the board of regents shall meet at least twice yearly as the state board of education.

(7) Other meetings of the state board of education may be called by the governor, by both the secretary to the board of public education and the secretary to the board of regents, or by joint action of eight appointed members, four each from the board of public education and the board of regents. All meetings of the state board of education shall be for the purposes set forth in subsection (1) above or for the purpose of considering other matters of common concern to the board of public education and the board of regents, but the state board of education may not exercise the powers and duties assigned by the 1972 Montana constitution and by law to the board of public education and the board of regents.

History: En. Sec. 7, Ch. 344, L. 1973; R.C.M. 1947, 75-5615; amd. Sec. 2, Ch. 21, L. 1985.

Cross-References

Regents' powers and duties, 20-25-301.

20-2-102 through 20-2-110 reserved.

20-2-111. Officers of boards — quorum. (1) The board of public education and the board of regents may each select a chairman from among their appointed members.

(2) The executive secretary shall serve as secretary to the board of public education, and the commissioner of higher education serves as secretary to the board of regents.

(3) A majority of the appointed members of each board constitutes a quorum for the transaction of business.

(4) The executive secretary shall serve as a liaison between the board of public education and the superintendent of public instruction and shall carry out other such duties as assigned by the board of public education.

History: En. Sec. 4, Ch. 344, L. 1973; amd. Sec. 2, Ch. 268, L. 1977; R.C.M. 1947, 75-5612; amd. Sec. 3, Ch. 21, L. 1985.

Cross-References

Regents' powers and duties, 20-25-301.

20-2-112. Quarterly meetings of boards — called meetings — notice of meetings. (1) The board of public education and the board of regents shall meet at least quarterly.

(2) Other meetings of either board may be called by the governor, by the chairman, by the secretary, or by four appointed members.

(3) The secretary to each board shall mail notice to each member at least 7 days in advance of all meetings of the respective board.

History: En. Sec. 5, Ch. 344, L. 1973; R.C.M. 1947, 75-5613; amd. Sec. 4, Ch. 21, L. 1985.

Cross-References

Open meetings, Title 2, ch. 3, part 2.

20-2-113. Per diem of board members — expenses. Appointed members of the board of public education and the board of regents shall be compensated and receive travel expenses as provided for in 2-15-124 for each day in attendance at board meetings or in the performance of any duty or service as a board member.

History: **En. Sec. 6, Ch. 344, L. 1973; amd. Sec. 50, Ch. 439, L. 1975; R.C.M. 1947, 75-5614; amd. Sec. 6, Ch. 650, L. 1985.**

20-2-114. Adoption of rules — seal — record of proceedings. The board of public education, the board of regents, and the state board of education each shall:

(1) adopt rules consistent with the constitution or laws of the state of Montana necessary for its own government or the proper execution of the powers and duties conferred upon it by law;

(2) adopt and use an official seal to authenticate its official acts; and

(3) keep a record of its proceedings.

History: **En. Sec. 8, Ch. 344, L. 1973; R.C.M. 1947, 75-5616.**

Cross-References

Seals defined, 1-4-201.

Manner of making seal, 1-4-202.

Regents' rulemaking power exempt from Montana Administrative Procedure Act, 2-4-102.

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

20-2-115. Rules with substantial financial impact — fiscal note — effect without funding. (1) When developing rules, policies, and standards under 20-2-121(6), (7), (9), and (11), the board of public education shall determine the financial impact of the rule, policy, or standard on school districts.

(2) The superintendent of public instruction shall prepare a fiscal note for submission to the board, using criteria and assumptions developed by the board. The fiscal note must be prepared within 30 days of a request unless the board agrees to a longer time. The board may also accept other testimony and exhibits on the financial impact to school districts before proceeding to rulemaking.

(3) If the financial impact of the proposed rule, policy, or standard is found by the board to be substantial, the board may not implement the rule until July 1 following the next regular legislative session and shall request the next legislature to fund implementation of the proposed rule, policy, or standard through the foundation program. A substantial financial impact is an amount that cannot be readily absorbed in the budget of an existing school district program.

(4) A proposed rule, policy, or standard not found by the board to have a substantial financial impact on school districts or funded by the legislature may be implemented at any time.

History: **En. Sec. 1, Ch. 691, L. 1985; amd. Sec. 1, Ch. 395, L. 1987.**

Compiler's Comments

1987 Amendment: In (1), after "shall", deleted "concurrently develop a fiscal note to"; in (2), in first sentence before "fiscal note", deleted "suggested", at end of first sentence, after "board", inserted "using criteria and assumptions developed by the board", and inserted second sentence; at end of (2) substituted "proceeding to rulemaking" for "completing a final fiscal note"; in (3), after "may not", substituted language concerning implementation for "proceed to rulemaking"; and at end of (4) substituted "be implemented at any time" for "proceed to rulemaking".

Cross-References

Duties of Board of Public Education, Art. X, sec. 9, Mont. Const.

Economic impact statement, 2-4-405.

Foundation program, 20-9-303.

20-2-116 through 20-2-120 reserved.

20-2-121. Board of public education — powers and duties. The board of public education shall:

(1) effect an orderly and uniform system for teacher certification and specialist certification and for the issuance of an emergency authorization of employment by adopting the policies prescribed by 20-4-102 and 20-4-111;

(2) consider the suspension or revocation of teacher or specialist certificates and appeals from the denial of teacher or specialist certification in accordance with the provisions of 20-4-110;

(3) administer and order the distribution of state equalization aid in accordance with the provisions of 20-9-344;

(4) adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of 20-10-111;

(5) approve or disapprove a reduction of the number of hours in a district's school day in accordance with the provisions of 20-1-302;

(6) adopt policies prescribing the conditions when school may be conducted on Saturday and the types of pupil-instruction-related days and approval procedure for such days in accordance with the provisions of 20-1-303 and 20-1-304;

(7) adopt standards of accreditation and establish the accreditation status of every school in accordance with the provisions of 20-7-101 and 20-7-102;

(8) approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of 20-7-201;

(9) adopt policies for the conduct of special education in accordance with the provisions of 20-7-402;

(10) adopt rules for issuance of documents certifying equivalency of completion of secondary education in accordance with 20-7-131;

(11) adopt policies for the conduct of programs for gifted and talented children in accordance with the provisions of 20-7-903 and 20-7-904;

(12) adopt rules for student assessment in the public schools; and

(13) perform any other duty prescribed from time to time by this title or any other act of the legislature.

History: En. 75-5607 by Sec. 8, Ch. 5, L. 1971; (amd. Sec. 15, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 15, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); amd. Sec. 1, Ch. 266, L. 1977; R.C.M. 1947, 75-5607; amd. Sec. 1, Ch. 511, L. 1979; amd. Sec. 9, Ch. 598, L. 1979; amd. Sec. 1, Ch. 94, L. 1983; amd. Sec. 1, Ch. 312, L. 1983; amd. Sec. 1, Ch. 377, L. 1987.

Compiler's Comments

1987 Amendment: Inserted (12).

Cross-References

Regents' powers and duties, 20-25-301.

20-2-122. Executive secretary to board of public education — staff. The board of public education may:

(1) appoint an executive secretary and employ other persons within legislatively authorized appropriations;

(2) prescribe the term, duties, and compensation of its executive secretary;

(3) provide office space for its staff to carry out its duties.

History: En. 75-5607.2 by Sec. 1, Ch. 268, L. 1977; R.C.M. 1947, 75-5607.2; amd. Sec. 1, Ch. 405, L. 1983.

20-2-123 through 20-2-130 reserved.

20-2-131. Commissioner of higher education — duties — compensation — staff. (1) The board of regents shall prescribe the duties of the commissioner of higher education and shall set his compensation.

(2) The board of regents shall provide sufficient staff and office space to the commissioner for him to carry out his duties.

History: En. Sec. 3, Ch. 344, L. 1973; R.C.M. 1947, 75-5611(2), (3).

Cross-References

Regents to appoint Commissioner of Higher Education, Art. X, sec. 9, Mont. Const.

Parts 2 and 3 reserved

Part 4

Commission on Federal Higher Education Programs

Part Cross-References

Commission on Federal Higher Education Programs, 2-15-1515.

20-2-401. Definition. Unless the context requires otherwise, in this part "commission" means the commission on federal higher education programs provided for in 2-15-1515.

History: En. 75-9002 by Sec. 2, Ch. 220, L. 1974; R.C.M. 1947, 75-9302.

20-2-402. Purpose. It is the purpose of this part to promote the education and welfare of the people of this state by creating an agency which meets the requirements of federal law to cooperate with the federal government in the establishment and administration of programs for higher education provided for by the congress of the United States.

History: En. 75-9001 by Sec. 1, Ch. 220, L. 1974; R.C.M. 1947, 75-9301.

20-2-403. Duties. The commission shall:

(1) administer state plans under Title I of the federal Higher Education Facilities Act of 1963, P.L. 88-204, as amended by P.L. 89-329;

(2) administer state plans under Title VI of the federal Higher Education Act of 1965, P.L. 89-329;

(3) administer state plans under Title I of the federal Higher Education Act of 1965; and

(4) administer other state plans under federal funding and grant programs which may be assigned by the governor or the legislature except those pertaining to the duties of the superintendent of public instruction and the board of public education.

History: En. 75-9003 by Sec. 4, Ch. 220, L. 1974; R.C.M. 1947, 75-9303.

CHAPTER 3

ELECTED OFFICIALS

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20-3-101. Election and qualifications.
20-3-102. Term, oath, and vacancy.
20-3-103. Deputy superintendent — staff.

20-3-104. Discretionary staff.
20-3-105. Administrative powers and duties.
20-3-106. Supervision of schools — powers and duties.
20-3-107. Controversy appeal.
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20-3-201. Election and qualifications.
20-3-202. Term, oath, and vacancy.
20-3-203. Office costs and staff.
20-3-204. Office hours.
20-3-205. Powers and duties.
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20-3-211. Disqualification of county superintendent.
20-3-212. The county superintendent to appoint another county superintendent.

Part 3 — School District Trustees

20-3-301. Election and term of office.
20-3-302. Legislative intent to elect less than majority of trustees.
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20-3-334 and 20-3-335 reserved.
20-3-336. Single-member trustee districts — legislative intent — minority defined.
20-3-337. Plan for creating single-member trustee districts.
20-3-338. Trustees elected by single-member district.
20-3-339 and 20-3-340 reserved.
20-3-341. Number of trustee positions in elementary districts.
20-3-342. Determination of terms after creation or consolidation of elementary districts.
20-3-343. Determination of terms after change of district classification.
20-3-344. Nomination of candidates by petition in first-class elementary district.
20-3-345 through 20-3-350 reserved.
20-3-351. Number of trustee positions in high school districts.
20-3-352. Request and determination of number of high school district additional trustee positions.
20-3-353. Establishment and purpose of trustee nominating districts.
20-3-354. Redetermination of additional trustee positions and subsequent adjustments.
20-3-355. Determination of terms after establishment or reestablishment of additional trustee positions.
20-3-356. Membership of elected trustees of high school district operating county high school and nomination of candidates.

20-3-357 through 20-3-360 reserved.
20-3-361. Joint board of trustees organization and voting membership.
20-3-362. Powers of joint board of trustees.

Chapter Cross-References

General election provisions, Title 13, ch. 1.

Election and campaign practices and criminal provisions, Title 13, ch. 35.

Control of campaign practices, Title 13, ch. 37.

School elections, Title 20, ch. 20.

Part 1

Superintendent of Public Instruction

Part Cross-References

Superintendent as part of executive branch, Art. VI, sec. 1, Mont. Const.

20-3-101. Election and qualifications. (1) A superintendent of public instruction for the state of Montana shall be elected by the qualified electors of the state at the general election preceding the expiration of the term of office of the incumbent.

(2) Any person shall be qualified to assume the office of superintendent of public instruction who:

(a) is 25 years of age or older at the time of his election;

(b) has resided within the state for the 2 years next preceding his election;

(c) holds at least a bachelor's degree from any unit of the Montana university system or from an institution recognized as equivalent by the board of public education for teacher certification purposes; and

(d) otherwise possesses the qualifications for such office which are required by The Constitution of the State of Montana.

History: En. 75-5702 by Sec. 11, Ch. 5, L. 1971; amd. Sec. 1, Ch. 17, L. 1973; R.C.M. 1947, 75-5702.

Cross-References

Election of Superintendent of Public Instruction, Art. VI, sec. 2, Mont. Const.

Qualifications of Superintendent of Public Instruction, Art. VI, sec. 3, Mont. Const.

Rules for determining residence, 1-1-215.

20-3-102. Term, oath, and vacancy. (1) The superintendent of public instruction shall hold office at the seat of government for the term of 4 years. He shall assume office on the first Monday of January following his election and shall hold the office until his successor has been elected and qualified. Any person elected as the superintendent of public instruction shall take the oath of a civil officer.

(2) If the office of superintendent of public instruction becomes vacant, it shall be filled in the manner prescribed by The Constitution of the State of Montana.

History: En. 75-5703 by Sec. 12, Ch. 5, L. 1971; R.C.M. 1947, 75-5703.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 20-1-202.

Vacancy in office — how filled, Art. VI, sec. 6, Mont. Const.; 2-16-505.

Oath defined, 1-1-201.

Affirmation in lieu of oath, 1-6-104.

Bonds of state officers and employees, Title 2, ch. 9, part 6.

20-3-103. Deputy superintendent — staff. (1) The state superintendent of public instruction shall appoint a deputy who, in the absence of the principal or in the case of vacancy in his office, shall perform all the duties of office until such disability be removed or vacancy be filled. Such deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of his duties.

(2) The superintendent of public instruction shall have the power to employ, organize, and administer a staff of personnel to assist him in the administration of the duties and services of the office. In organizing his staff, the superintendent of public instruction may employ:

(a) a supervisor of physical education who is a graduate of an accredited institution of higher education with a master's degree in physical education;

(b) a professional staff for the state supervision and administration of K-12 vocational education; and

(c) a special education supervisor who is a graduate of an accredited institution of higher education with a master's degree in a field of special education for the mentally retarded or physically handicapped and who has not less than 2 years' experience in special education.

History: (1)En. Sec. 1, Ch. 86, L. 1903; re-en. Sec. 143, Rev. C. 1907; re-en. Sec. 122, R.C.M. 1921; re-en. Sec. 122, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1947; amd. Sec. 1, Ch. 8, L. 1949; amd. Sec. 48, Ch. 177, L. 1965; amd. Sec. 3, Ch. 468, L. 1977; Sec. 82-601, R.C.M. 1947; (2)En. 75-5704 by Sec. 13, Ch. 5, L. 1971; Sec. 75-5704, R.C.M. 1947; R.C.M. 1947, 75-5704, 82-601(part); amd. Sec. 10, Ch. 598, L. 1979; amd. Sec. 1, Ch. 436, L. 1987; amd. Sec. 8, Ch. 658, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 436 in second sentence of (2) substituted "shall" for "may".

Chapter 658 in (2)(b) inserted "K-12".

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 20-1-202.

Oath defined, 1-1-201.

Affirmation in lieu of oath, 1-6-104.

Bonds of state officers and employees, Title 2, ch. 9, part 6.

Vocational education, Title 20, ch. 7, part 3.

Special education, Title 20, ch. 7, part 4.

20-3-104. Discretionary staff. In addition to the positions of employment listed in 20-3-103, the superintendent of public instruction may employ:

(1) one or more assistant superintendents, one of whom may be designated as assistant superintendent for vocational education;

(2) a high school supervisor who is the holder of a class 3 teacher certificate with a district superintendent endorsement;

(3) an elementary supervisor who is the holder of a valid teacher certificate;

(4) a competent person to develop economy and efficiency in school transportation and to otherwise supervise the transportation program;

(5) a music supervisor who is a graduate of an accredited institution of higher education in music education and who has not less than 5 years of teaching experience;

(6) an educational media supervisor who is a graduate of an accredited institution of higher education and who has experience in the field of educational media; and

(7) any other supervisors or assistants as may be required to carry out the duties of his office.

History: En. 75-5705 by Sec. 14, Ch. 5, L. 1971; R.C.M. 1947, 75-5705; amd. Sec. 11, Ch. 598, L. 1979.

Cross-References
Vocational education, Title 20, ch. 7, part 3.
Transportation, Title 20, ch. 10.

20-3-105. Administrative powers and duties. In administering the affairs of his office, the superintendent of public instruction shall have the power and it shall be his duty to:

(1) keep a record of his official acts and all documents applicable to the administration of the office, preserve all official reports submitted to him for the period required by law, and surrender them to his successor at the expiration of his term;

(2) preserve all books, educational media, instructional equipment, and any other articles of educational interest and value which come into his possession and surrender them to his successor at the expiration of his term;

(3) cause the printing and distribution of all reports and forms necessary for the proper conduct of business by a district or school in the manner prescribed by the provisions of this title;

(4) provide and keep an official seal of the superintendent of public instruction by which his official acts shall be authenticated;

(5) if he deems necessary, cause the printing of a complete and updated volume of the school laws of the state, which shall be offered and sold at cost of the printing and shipping to any school official or other person;

(6) whenever a replacement volume is not printed under the provisions of subsection (5), cause the printing of a cumulative supplement to the most recent volume of school laws immediately after the conclusion of any session of the legislature at which new school laws or amendments to the school laws were adopted. It shall be offered and sold at cost of the printing and shipping to any school official or other person.

(7) if deemed necessary, publish a biennial report of the superintendent of public instruction;

(8) counsel with and advise county superintendents on matters involving the welfare of the schools and, when requested, give a county superintendent a written answer to any question concerning school law;

(9) call an annual meeting of the county superintendents when he deems it advisable;

(10) as far as he shall find it practicable, address public assemblies on subjects pertaining to education in Montana; and

(11) faithfully work in all practical and possible ways for the welfare of the public schools of the state.

History: En. 75-5706 by Sec. 15, Ch. 5, L. 1971; R.C.M. 1947, 75-5706; amd. Sec. 6, Ch. 125, L. 1983; amd. Sec. 1, Ch. 410, L. 1987.

Compiler's Comments
1987 Amendment: In (5), at beginning, substituted "if he deems necessary" for "whenever he deems necessary but not more than once every 4 years".

Cross-References
Duties of Superintendent of Public Instruction, Art. VI, sec. 4, Mont. Const.
Seals, Title 1, ch. 4, part 2.
Public records, Title 2, ch. 6.
Distribution of missing children list, 44-2-503, 44-2-506.

20-3-106. Supervision of schools — powers and duties. The superintendent of public instruction has the general supervision of the public schools and districts of the state, and he shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) serve on the teachers' retirement board in accordance with the provisions of 2-15-1010;

(5) approve or disapprove the orders of a high school boundary commission in accordance with the provisions of 20-6-311;

(6) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(7) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(8) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

(9) establish a system of communication for calculating joint district revenues in accordance with the provisions of 20-9-151;

(10) approve or disapprove the adoption of a district's emergency budget resolution under the conditions prescribed in 20-9-163 and publish rules for an application for additional state aid for an emergency budget in accordance with the approval and disbursement provisions of 20-9-166;

(11) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(12) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(5) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(13) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(14) distribute state equalization aid in support of the foundation program in accordance with the provisions of 20-9-342, 20-9-346, and 20-9-347;

(15) distribute state impact aid in accordance with the provisions of 20-9-304;

(16) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(17) approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of 20-7-705;

(18) request, accept, deposit, and expend federal moneys in accordance with the provisions of 20-9-603;

(19) authorize the use of federal moneys for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(20) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(21) approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of 20-1-303 and 20-1-304;

(22) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with such standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

(23) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(24) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(25) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(26) as the governing agent and executive officer of the state of Montana for K-12 vocational education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(27) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(28) administer the traffic education program in accordance with the provisions of 20-7-502;

(29) administer the school food services program in accordance with the provisions of 20-10-201, 20-10-202, and 20-10-203;

(30) review school building plans and specifications in accordance with the provisions of 20-6-622;

(31) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408;

(32) provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of such student assessment for the board of public education and the legislature;

(33) administer the distribution of state retirement equalization aid in accordance with 20-9-532; and

(34) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education. *(Subsection (33) effective July 1, 1988—sec. 8, Ch. 635, L. 1987.)*

History: En. 75-5707 by Sec. 16, Ch. 5, L. 1971; amd. Sec. 2, Ch. 137, L. 1973; (amd. Sec. 16, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 16, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); amd. Sec. 3, Ch. 266, L. 1977; amd. Sec. 1, Ch. 277, L. 1977; R.C.M. 1947, 75-5707; amd. Sec. 1, Ch. 384, L. 1979; amd. Sec. 351, Ch. 571, L. 1979; amd. Sec. 12, Ch. 598, L. 1979; amd. Sec. 1, Ch. 299, L. 1985; amd. Sec. 2, Ch. 377, L. 1987; amd. Sec. 3, Ch. 635, L. 1987; amd. Sec. 9, Ch. 658, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 377 inserted (32).

Chapter 635 inserted (33).

Chapter 658 in (26) inserted "K-12"; and deleted former (27) and (28) requiring Superintendent to consider applications for designation of a postsecondary vocational-technical center and to establish a fund for a center's fees.

Cross-References

State Board of Land Commissioners — membership on, Art. X, sec. 4, Mont. Const.

20-3-107. Controversy appeal. (1) The superintendent of public instruction shall decide matters of controversy when they are appealed from:

(a) a decision of a county superintendent rendered under the provisions of 20-3-210; or

(b) a decision of a county transportation committee rendered under the provisions of 20-10-132.

(2) The superintendent of public instruction shall make his decision on the basis of the transcript of the fact-finding hearing conducted by the county superintendent or county transportation committee and documents presented at the hearing. The superintendent of public instruction may require, if he deems necessary, affidavits, verified statements, or sworn testimony as to the facts in issue. The decision of the superintendent of public instruction shall be final, subject to the proper legal remedies in the state courts. Such proceedings shall be commenced no later than 60 days after the date of the decision of the superintendent of public instruction.

(3) In order to establish a uniform method of hearing and determining matters of controversy arising under this title, the superintendent of public instruction shall prescribe and enforce rules of practice and regulations for the conduct of hearings and the determination of appeals by all school officials of the state.

(4) Whenever in a contested case the superintendent of public instruction is disqualified from rendering a final decision, he shall appoint a hearing examiner as provided in 2-4-611 and the decision of the hearing examiner constitutes the superintendent's final order except as provided in this subsection. Such final order is subject to all the provisions of Title 2, chapter 4, relating to final agency decisions or orders, including judicial review under Title 2, chapter 4, part 7.

History: En. 75-5709 by Sec. 18, Ch. 5, L. 1971; amd. Sec. 1, Ch. 300, L. 1974; R.C.M. 1947, 75-5709; amd. Sec. 2, Ch. 467, L. 1979.

Cross-References

Oaths, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.

Perjury, 45-7-201.

False swearing, 45-7-202.

20-3-108. Division of resources and assessment account. There is a resources and assessment account in the state special revenue fund. Funds derived from the sale of educational materials or services provided by the division of resources and assessment shall be deposited in the resources and assessment account. In addition to other available funds, the superintendent of public instruction shall use these funds for the operation and maintenance of the division of resources and assessment as authorized by 20-3-106.

History: En. Sec. 1, Ch. 436, L. 1979; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 66, Ch. 370, L. 1987; amd. Sec. 1, Ch. 470, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 370 at end of section changed "20-3-106(25)" to "20-3-106(23)" (not codified as explained below).

Chapter 470 substituted first sentence for "The superintendent of public instruction shall establish an enterprise fund within the office of public instruction for the division of resources and assessment", at end of second sentence substituted "account" for "enterprise fund", and at end deleted reference to subsection of 20-3-106.

Cross-References

Special accounts, Title 17, ch. 2, part 2.

Part 2

County Superintendent of Schools

Part Cross-References

Service by Supreme Court Marshal, 3-2-502.

Service by Constable, 3-10-701, 3-10-706.

County officers generally, Title 7, ch. 4.

Duties of County Sheriff, 7-4-3001; Title 7, ch. 32, part 21.

20-3-201. Election and qualifications. (1) A county superintendent shall be elected in each county of the state unless a county manager form of government has been organized in the county. The county superintendent shall be elected at the general election preceding the expiration of the term of office of the incumbent.

(2) Any person shall be qualified to assume the office of county superintendent who:

(a) is a qualified elector;

(b) holds a valid teacher certificate issued by the superintendent of public instruction; and

(c) has not less than 3 years of successful teaching experience.

(3) When the office of county superintendent of schools is consolidated with another county office within the county, the officeholder shall have the qualifications of subsection (2) or he shall, with the approval of the governing body, contract for the services of another county superintendent, with approval of the governing body of that county, to perform the duties required of a county superintendent in 20-3-207 and 20-3-210. The officeholder may contract for the services of another county superintendent to perform other duties required by law of a county superintendent. The superintendent of public instruction shall prescribe a contract form to be used.

History: En. 75-5802 by Sec. 20, Ch. 5, L. 1971; amd. Sec. 29, Ch. 100, L. 1973; R.C.M. 1947, 75-5802; amd. Sec. 1, Ch. 355, L. 1979; amd. Sec. 1, Ch. 550, L. 1985.

Compiler's Comments

1985 Amendment — Transition: In (3) substituted present language for "When the office of county superintendent of schools is consolidated with another county office within the county, the requirements of subsection (2) shall be waived. Unless the officeholder has the qualifications of subsection (2), he shall, with the approval of the governing body, contract for the services of a person with those qualifications to perform the duties required of county superintendents in counties where the office has not been consolidated."

Section 2, Ch. 550, provided that the 1985 amendment would be effective in each county in which, prior to October 1, 1985, the office of county superintendent of schools had been consolidated with another office upon:

(1) The beginning of the next term of office after October 1, 1985, of the county officer with which the office of the county superintendent of schools has been consolidated; or

(2) If a contract was entered into under the provisions of this section, as it read prior to the 1985 amendment, and the contract extends into the next term of the officer set forth in subsection (1), then upon the expiration of such contract.

Cross-References

General qualifications for county office, 7-4-2201.

Consolidation of county offices, Title 7, ch. 4, part 23.

Salary, 7-4-2503.

20-3-202. Term, oath, and vacancy. (1) The county superintendent shall hold office for a term of 4 years. He shall assume office on the first Monday of January following his election and shall hold the office until his successor has been elected and qualified.

(2) Any person elected as the county superintendent shall take the oath or affirmation of office and shall give an official bond, as required by law.

(3) If the office of county superintendent becomes vacant, the board of county commissioners shall appoint a replacement to fill the vacancy. Such replacement shall serve until the next regular general election, when a person shall be elected to serve the remainder of the initial term, if there be any remaining term.

History: En. 75-5803 by Sec. 21, Ch. 5, L. 1971; R.C.M. 1947, 75-5803.

Cross-References

Constitutional oath, Art. III, sec. 3, Mont. Const.

Oaths, Title 1, ch. 6; 2-16-211; 20-1-202.

Term of office of county officers, 7-4-2205.

Vacancies in county offices generally, 7-4-2206.

20-3-203. Office costs and staff. (1) The board of county commissioners shall supply the county superintendent with suitable office space and office supplies. The county superintendent shall be paid from the county general fund all necessary traveling expenses that he actually incurs in discharging his duties, after such expenses have been audited by the board of county commissioners.

(2) Upon the county superintendent's recommendation of a candidate, the board of county commissioners may appoint such candidate to the position of chief deputy county superintendent. The commissioners also may appoint deputies and assistants for the county superintendent. The commissioners shall fix the salaries of the personnel prescribed by this section at 90% or less of the salary of the county superintendent.

History: En. 75-5804 by Sec. 22, Ch. 5, L. 1971; R.C.M. 1947, 75-5804.

Cross-References

Deputy county officers in general, Title 7, ch. 4, part 24.

20-3-204. Office hours. (1) The county superintendent of schools shall keep his office open from 8 a.m. until 5 p.m. every day when he is not engaged in the supervision of schools except on holidays and on Saturdays, provided that when the county superintendent has a deputy or clerk, the office shall be kept open from 8 a.m. until 5 p.m. every day except holidays and except Saturdays. Said office shall be kept open at all times as business may require.

(2) This section shall not apply to counties operating under the county manager plan.

History: En. Sec. 4323, Pol. C. 1895; re-en. Sec. 2968, Rev. C. 1907; re-en. Sec. 4736, R.C.M. 1921; Cal. Pol. C. Sec. 4116; re-en. Sec. 4736, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1949; amd. Sec. 1, Ch. 199, L. 1957; R.C.M. 1947, 16-2414(part).

20-3-205. Powers and duties. The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(1) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(2) administer and file the oaths of members of the boards of trustees of the districts in his county in accordance with the provisions of 20-3-307;

(3) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(4) act on each tuition application submitted to him in accordance with the provisions of 20-5-301, 20-5-302, 20-5-304, and 20-5-311 and transmit the tuition information required by 20-5-312;

(5) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(6) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(7) keep a transcript and reconcile the district boundaries of the county in accordance with the provisions of 20-6-103;

(8) fulfill all responsibilities assigned to him under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(9) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(10) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(11) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(12) complete the budgets, compute the budgeted revenues and tax levies, give notices of the budget meetings, file final and emergency budgets, and fulfill such other responsibilities assigned to him under the provisions of this title regulating school budgeting systems;

(13) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(14) quarterly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-334, 20-9-347, 20-10-145, or 20-10-146;

(15) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(16) calculate the estimated budgeted general fund sources of revenue in accordance with the provisions of 20-9-348 and the other general fund revenue provisions of the general fund part of this title;

(17) compute the revenues and the district and county levy requirements for each fund included in each district's final budget and report such computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(18) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(19) for districts which do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(20) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(21) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(22) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(23) administer the oath of office to trustees without the receipt of pay for administering the oath;

(24) keep a record of his official acts, preserve all reports submitted to him under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender such records, books, supplies, and equipment to his successor;

(25) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(b) the total receipts that were realized in each fund maintained by the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(26) hold meetings for the members of the trustees from time to time at which matters for the good of the districts shall be discussed.

History: (1) thru (22)En. 75-5805 by Sec. 23, Ch. 5, L. 1971; amd. Sec. 4, Ch. 266, L. 1977; Sec. 75-5805, R.C.M. 1947; (23) thru (26)En. 75-5807 by Sec. 25, Ch. 5, L. 1971; Sec. 75-5807, R.C.M. 1947; R.C.M. 1947, 75-5805, 75-5807; amd. Sec. 1, Ch. 269, L. 1979; amd. Sec. 15, Ch. 392, L. 1979; amd. Sec. 2, Ch. 511, L. 1979; amd. Sec. 5, Ch. 317, L. 1981.

20-3-206. Additional positions. In his capacity as county superintendent, he also shall serve as:

(1) the chairman of the county transportation committee, as prescribed by 20-10-131;

(2) a member of the high school boundary commission of the county, as prescribed by 20-6-304;

(3) an attendance officer for a district under the conditions prescribed by 20-5-104; and

(4) the clerk of a joint board of trustees under the conditions prescribed by 20-3-361.

History: En. 75-5806 by Sec. 24, Ch. 5, L. 1971; amd. Sec. 2, Ch. 277, L. 1977; R.C.M. 1947, 75-5806.

Cross-References

Consolidation of county offices, Title 7, ch. 4, part 23.

20-3-207. Assist trustees with school supervision. The county superintendent shall assist the trustees of any district that does not employ a district superintendent or principal with the supervision of their schools by:

(1) visiting each school of the district at least once a school year while pupil instruction is being conducted to observe the instructional methods, ability of the teacher, progress and discipline of the pupils, and the general conditions of the school;

(2) special visits to the schools on request of the trustees;

(3) advising and directing teachers on instruction, pupil discipline, and other duties of the teacher;

(4) consulting with the trustees on all school matters that may be found during the observation of the school or may otherwise come to the attention of the county superintendent.

History: En. 75-5808 by Sec. 26, Ch. 5, L. 1971; R.C.M. 1947, 75-5808.

20-3-208. Authority to request, accept, and disburse money. (1) A county superintendent may, with the advice and consent of the appropriate school boards, request and accept money made available from federal, state, or private sources for purposes of public education.

(2) Subject to applicable federal and state guidelines and, in the case of money received from private sources, subject to any guidelines fixed by the donor, a county superintendent may, in his discretion, disburse money received under this section to one or more public elementary or high school districts according to their needs. The county superintendent shall supervise the utilization of such money with the approval of the appropriate school boards.

(3) The county superintendent may establish a fund, for which the county treasurer shall maintain a separate accounting, for the deposit of money received under this section.

History: En. 75-5808.1 by Sec. 1, Ch. 238, L. 1977; R.C.M. 1947, 75-5808.1; amd. Sec. 1, Ch. 182, L. 1979.

Cross-References

Power to accept gifts, 20-6-601.

Fiscal duties of trustees, 20-9-213.

20-3-209. Annual report and receipt. (1) The county superintendent of each county shall submit an annual report to the superintendent of public instruction not later than September 1. Such report shall be completed on the forms supplied by the superintendent of public instruction which shall require the reporting of:

(a) the final budget information for each district of the county, as prescribed by 20-9-134(1);

(b) the financial activities of each district of the county for the immediately preceding school fiscal year as provided by the trustees' annual report to the county superintendent under the provisions of 20-9-213(5);

(c) the pupil information for each district provided the county superintendent under the provisions of 20-4-301(1)(d) or 20-4-402(7); and

(d) any other information that may be requested by the superintendent of public instruction which is within his authority prescribed by this title.

(2) When the superintendent of public instruction receives a complete annual report from the county superintendent, he shall immediately issue a receipt for the annual report to such county superintendent. The county superintendent shall present the receipt to the board of county commissioners, and if the county commissioners do not receive the receipt, they shall not pay the county superintendent's salary for the last 2 months of the calendar year until the receipt is presented to them.

History: En. 75-5809 by Sec. 27, Ch. 5, L. 1971; R.C.M. 1947, 75-5809.

Cross-References

Duty of teachers to report, 20-4-301.

County Superintendent's annual financial report, 20-9-211.

Duty of trustees to report to County Superintendent, 20-9-213(5).

20-3-210. Controversy appeals and hearings. (1) Except as provided under 20-3-211, the county superintendent shall hear and decide all matters of controversy arising in his county as a result of decisions of the trustees of a district in the county. When appeals are made under 20-4-204 relating to the termination of services of a tenure teacher or under 20-4-207 relating to the dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney at law to act as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the superintendent of public instruction under the provisions for appeal of controversies in this title. Furthermore, he shall hear and decide all controversies arising under:

(a) section 20-5-304 or 20-5-311 relating to the approval of tuition applications; or

(b) any other provision of this title for which a procedure for resolving controversies is not expressly prescribed.

(2) The county superintendent shall hear the appeal and take testimony in order to determine the facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. He shall prepare a written transcript of the hearing proceedings. The decision on the matter of controversy which is made by the county superintendent shall be based upon the facts established at such hearing.

(3) The decision of the county superintendent may be appealed to the superintendent of public instruction, and if it is appealed, the county superintendent shall supply a transcript of the hearing and any other documents entered as testimony at the hearing to the superintendent of public instruction.

(4) Cost incurred by the office of the county superintendent shall be paid from the general fund budget of the county in which the controversy is initiated.

History: **En. 75-5811 by Sec. 29, Ch. 5, L. 1971; amd. Sec. 1, Ch. 306, L. 1974; R.C.M. 1947, 75-5811; amd. Sec. 3, Ch. 489, L. 1979.**

Cross-References

Oaths, Title 1, ch. 6.

Review by Superintendent of Public Instruction, 20-3-354.

Perjury, 45-7-201.

20-3-211. Disqualification of county superintendent. A county superintendent may not hear or decide matters of controversy pursuant to 20-3-210 when:

(1) he is a party to or has an interest in the controversy;

(2) he is related to either party in the controversy by consanguinity or affinity within the sixth degree, computed according to the rules of law;

(3) either party to the controversy makes and files with the county superintendent of schools an affidavit that he has reason to believe and does believe that he cannot have a fair and impartial hearing before the county superintendent by reason of the bias or prejudice of the county superintendent; or

(4) the controversy involves the education or possible identification of a handicapped child.

History: **En. Sec. 1, Ch. 489, L. 1979; amd. Sec. 1, Ch. 236, L. 1987.**

Compiler's Comments

1987 Amendment: Inserted (4).

Cross-References

Code of ethics, Title 2, ch. 2, part 1.

20-3-212. The county superintendent to appoint another county superintendent. (1) When a county superintendent is disqualified pursuant to 20-3-211, that county superintendent must appoint another county superintendent to hear and decide the matter of controversy arising pursuant to 20-3-210.

(2) The county in which the controversy was initiated shall reimburse the county served by the county superintendent appointed pursuant to subsection (1) for actual costs of travel, room, and board as a result of the appointment. Such county superintendent is entitled to expenses as provided in 20-3-203(1).

History: En. Sec. 2, Ch. 489, L. 1979.

Part 3

School District Trustees

Part Cross-References

School district trustees, Art. X, sec. 8, Mont. Const.

20-3-301. Election and term of office. (1) Every trustee position prescribed by this title shall be subject to election, and the term of office for each position shall be 3 years unless it is otherwise specifically prescribed by this title.

(2) The trustees shall be composed of the number of trustee positions prescribed for a district by 20-3-341 and 20-3-351. When exercising the power and performing the duties of trustees, the members shall act collectively and only at a regular or a properly called special meeting.

(3) The number of trustee positions in a district shall vary in accordance with 20-3-341 and 20-3-351 according to the type of district.

History: (1)En. 75-5906 by Sec. 35, Ch. 5, L. 1971; amd. Sec. 1, Ch. 122, L. 1975; Sec. 75-5906, R.C.M. 1947; (2)En. 75-5901 by Sec. 30, Ch. 5, L. 1971; Sec. 75-5901, R.C.M. 1947; (3)En. 75-5902 by Sec. 31, Ch. 5, L. 1971; amd. Sec. 1, Ch. 103, L. 1975; Sec. 75-5902, R.C.M. 1947; R.C.M. 1947, 75-5901(part), 75-5902(part), 75-5906.

Cross-References

Campaign finance provisions not to apply to election of school trustees, 13-37-206.

District classification, 20-6-201, 20-6-301.

20-3-302. Legislative intent to elect less than majority of trustees. (1) It is the intention of the legislature that the terms of a majority of the trustee positions of any district with elected trustees shall not regularly expire and be subject to election on the same regular school election day. Therefore, in elementary districts, there shall not be more than three trustee positions in first-class districts, two trustee positions in second-class districts or third-class districts having five trustee positions, or one trustee position in third-class districts having three trustee positions regularly subject to election at the same time. In high school districts there shall not be more than two additional trustee positions in first- or second-class districts or more than one in third-class districts regularly subject to election at the same time. In high school districts operating a county high school, there shall not be more than two trustee positions to be filled by members residing in the elementary district where the county high school building is located or more than one trustee position to be filled by members residing outside of the elementary district where the county high school building is located subject to election at the same time.

(2) While it is the intention of the legislature that the terms of a majority of trustees of any district shall not regularly expire and be subject to election at the same time, it is recognized that the following circumstances, relating to the terms of trustees appointed to newly created positions or to positions vacated by death, resignation, or operation of law, may lead to a subsequent school election in which a majority of trustee positions are subject to election at the same time:

(a) the creation of a new elementary district under the provisions of 20-6-217;

(b) the consolidation of two or more elementary districts to form an elementary district under the provisions of 20-6-203;

(c) the establishment of additional trustee positions of a high school district under the provisions of 20-3-353 or 20-3-354;

(d) the change of a district's classification under the provisions of 20-6-201 and 20-6-301;

(e) the filling of a trustee position which has become vacant under the provisions of 20-3-308 or any other provision of law;

(f) the establishment of additional elementary trustee positions under the provisions of 20-3-341(3); or

(g) any other circumstance arising under the law wherein a trustee position is filled by appointment subject to election at the next regular school election.

History: En. 75-5907 by Sec. 36, Ch. 5, L. 1971; amd. Sec. 2, Ch. 103, L. 1975; amd. Sec. 2, Ch. 122, L. 1975; R.C.M. 1947, 75-5907.

Cross-References

District classification, 20-6-201, 20-6-301.

Appointment of trustees when new elementary district created, 20-6-217.

Appointment of trustees when new high school district created, 20-6-313.

20-3-303. Term of vacated trustee position after election. Whenever a trustee position is subject to election because a vacancy of such position has occurred since the last regular school election day, the term of the trustee position shall not change and the member elected to fill such position shall serve the remainder of the unexpired term.

History: En. 75-5911 by Sec. 40, Ch. 5, L. 1971; R.C.M. 1947, 75-5911.

20-3-304. Annual election. In each district an election of trustees shall be conducted annually on the regular school election day, the first Tuesday of April. Election of trustees shall comply with the election provisions of Title 13 and this title.

History: En. 75-5912 by Sec. 41, Ch. 5, L. 1971; amd. Sec. 2, Ch. 109, L. 1974; R.C.M. 1947, 75-5912; amd. Sec. 353, Ch. 571, L. 1979.

Cross-References

Election of trustees after organization of community college district, 20-15-221.

Regular school election day and special school elections, 20-20-105.

20-3-305. Candidate qualification and nomination. (1) Except as provided in 20-3-338, any person who is qualified to vote in a district under the provisions of 20-20-301 shall be eligible for the office of trustee.

(2) Except as provided in 20-3-338, any five electors qualified under the provisions of 20-20-301 of any district, except a first-class elementary district,

may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy shall be submitted to the clerk of the district not less than 40 days before the regular school election day at which he is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated shall also be indicated.

History: En. 75-5913 by Sec. 42, Ch. 5, L. 1971; R.C.M. 1947, 75-5913; amd. Sec. 1, Ch. 372, L. 1987; amd. Sec. 4, Ch. 539, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 372 in (2) increased time from 20 days to 40 days.

Chapter 539 in (1) and (2), at beginning, inserted exception clause referencing 20-3-338.

Cross-References

Regular school election day and special school elections, 20-20-105.

20-3-306. Conduct of election. (1) The trustees of each district shall call a trustee election on the regular school election day of each school fiscal year under the provisions of 20-20-201, except as provided in 20-3-344. The trustees shall call and conduct the trustee election in the manner prescribed in this title for school elections and Title 13. Any elector qualified to vote under the provisions of 20-20-301 may vote at a trustee election.

(2) The trustee election ballots shall be substantially in the following form:

OFFICIAL BALLOT
SCHOOL TRUSTEE ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the name of the candidate for whom you wish to vote.

Vote for (indicate number to be elected) for a 3-year term:

☐ (List the names of the candidates for a 3-year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a 2-year term:

☐ (List the names of the candidates for a 2-year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a 1-year term:

☐ (List the names of the candidates for a 1-year term with a vacant square in front of each name.)

History: En. 75-5915 by Sec. 44, Ch. 5, L. 1971; amd. Sec. 2, Ch. 165, L. 1973; amd. Sec. 2, Ch. 259, L. 1973; R.C.M. 1947, 75-5915; amd. Sec. 352, Ch. 571, L. 1979.

Cross-References

Regular school election day and special school elections, 20-20-105.

20-3-307. Qualification and oath. (1) Any person who receives a certificate of election as a trustee under the provisions of 20-20-416 shall not assume the trustee position until he has qualified. Such person shall qualify by completing and filing an oath of office with the county superintendent not more than 15 days after the receipt of the certificate of election. After a person has qualified for a trustee position, he shall hold such position for the term of the position and until his successor has been elected or appointed and has been qualified.

(2) If the elected person does not qualify in accordance with this requirement, a person shall be appointed in the manner provided by 20-3-309 and shall serve until the next regular election.

History: **En. 75-5916 by Sec. 45, Ch. 5, L. 1971; amd. Sec. 1, Ch. 91, L. 1973; R.C.M. 1947, 75-5916.**

Cross-References

Constitutional oath of office, Art. III, sec. 3, Mont. Const.

Oath of office, 20-1-202.

20-3-308. Vacancy of trustee position. (1) Any elected trustee position shall be vacant whenever the incumbent:

(a) dies;

(b) resigns;

(c) moves his residence from the applicable district or from the nominating district in the case of an additional trustee in a high school district;

(d) is no longer a registered elector of the district under the provisions of 20-20-301;

(e) is absent from the district for 60 consecutive days;

(f) fails to attend three consecutive meetings of the trustees without a good excuse;

(g) has been removed under the provisions of 20-3-310; or

(h) ceases to have the capacity to hold office under any other provision of law.

(2) A trustee position also shall be vacant when an elected candidate fails to qualify under the provisions of 20-3-307.

History: **En. 75-5917 by Sec. 46, Ch. 5, L. 1971; R.C.M. 1947, 75-5917.**

Cross-References

Rules for determining residence, 1-1-215.

Vacancy in community college trustee position, 20-15-223.

20-3-309. Filling vacated trustee position — appointee qualification and term of office. (1) Whenever a trustee position becomes vacant in any district, the remaining members of the trustees shall declare such position vacant and they shall appoint, in writing within 60 days, a competent person as a successor. The trustees shall notify the appointee and the county superintendent of such appointment. If the trustees do not make the appointment within such 60-day period, the county superintendent shall appoint, in writing, a competent person as a successor and notify such person of his appointment.

(2) Any person who has been appointed to a trustee position shall qualify by completing and filing an oath of office with the county superintendent within 15 days after receiving notice of his appointment. Failure to file the oath of office shall constitute a continuation of the trustee position vacancy which shall be filled under the provisions of this section.

(3) Any person assuming a trustee position under the provisions of this section shall serve until the next regular school election and his successor has qualified.

History: **En. 75-5918 by Sec. 47, Ch. 5, L. 1971; amd. Sec. 3, Ch. 122, L. 1975; amd. Sec. 5, Ch. 266, L. 1977; R.C.M. 1947, 75-5918; amd. Sec. 2, Ch. 269, L. 1979.**

Cross-References

Filling vacancy in community college trustee position, 20-15-223.

20-3-310. Trustee removal. Any trustee may be removed from his trustee position by a court of competent jurisdiction under the law providing for the removal of elected civil officials. When charges are preferred against a trustee and good cause is shown, the board of county commissioners may suspend such trustee from his trustee position until the charges can be heard in the court of competent jurisdiction.

History: En. 75-5919 by Sec. 48, Ch. 5, L. 1971; R.C.M. 1947, 75-5919.

Cross-References

Impeachment, Art. V, sec. 13, Mont. Const.; Title 5, ch. 5, part 4.

Notice of removal, 2-16-503.

Montana Recall Act, Title 2, ch. 16, part 6.

Removal for acceptance of emoluments, 20-7-608.

20-3-311. Trustee travel reimbursement and compensation of secretary for joint board. The members of the trustees of any district shall not receive compensation for their services as trustees, except that the secretary of the trustees of a high school district operating a county high school or the secretary of a joint board of trustees may be compensated for his services as the secretary. The members of the trustees who reside over 3 miles from the trustees' meeting place shall be reimbursed at the rate as provided in 2-18-503, for every mile necessarily traveled between their residence and the meeting place and return in attending the regular and special meetings of the trustees, and all trustees shall be similarly reimbursed for meetings called by the county superintendent. The travel reimbursement may be accumulated during the school fiscal year and paid at the end of the fiscal year, at the discretion of each trustee.

History: En. 75-5931 by Sec. 60, Ch. 5, L. 1971; amd. Sec. 1, Ch. 62, L. 1974; R.C.M. 1947, 75-5931.

Cross-References

Rules for determining residence, 1-1-215.

20-3-312. Trustees of district affected by boundary change. The trustees of any district to which the territory of another district is attached as a result of annexation, abandonment, joint district dissolution, territory transfer, or any other method of changing district boundaries, except by the consolidation of elementary districts or by the creation of a new elementary district, shall continue to be the trustees of such district with the same powers, duties, and responsibilities and subject to the same limitations provided by law, as if there had been no boundary change. In the case of elementary district consolidation or the creation of a new elementary district, the appointed trustees of the resulting elementary district shall assume their trustee positions under the authority of 20-6-203 or 20-6-216, whichever is applicable.

History: En. 75-6531 by Sec. 190, Ch. 5, L. 1971; R.C.M. 1947, 75-6531.

Cross-References

Elementary school districts, Title 20, ch. 6, part 2.

High school districts, Title 20, ch. 6, part 3.

School district reorganization, Title 20, ch. 6, part 4.

20-3-313 through 20-3-320 reserved.

20-3-321. Organization and officers. (1) The trustees of each district shall annually organize as a governing board of the district after the regular election day and after the issuance of the election certificates to the newly elected trustees, but not later than the third Saturday of April. In order to organize, the trustees of the district shall be given notice of the time and place where the organization meeting will be held, and at such meeting they shall choose one of their number as the chairman. In addition, except for the trustees of a high school district operating a county high school, the trustees shall employ and appoint a competent person, who is not a member of the trustees, as the clerk of the district. The trustees of a high school district operating a county high school shall appoint a secretary, who shall be a member of the board.

(2) The chairman of the trustees of any district shall serve until the next organization meeting and shall preside at all the meetings of the trustees in accordance with the customary rules of order. He shall perform the duties prescribed by this title and any other duties that normally pertain to such officer.

History: En. 75-5927 by Sec. 56, Ch. 5, L. 1971; amd. Sec. 5, Ch. 122, L. 1975; R.C.M. 1947, 75-5927.

Cross-References

Regular school election day and special school elections, 20-20-105.

Certificate of election, 20-20-416.

20-3-322. Meetings and quorum. (1) The trustees of a district shall hold at least the following number of regular meetings:

(a) an organization meeting, as prescribed by 20-3-321;

(b) a preliminary budget meeting, as prescribed by 20-9-113; and

(c) in first-class elementary districts, not less than one regular meeting per month; or

(d) in any other district, regular meetings during the months of April, July, October, and January.

(2) The trustees of the district shall adopt a policy setting the day and time for the minimum number of regular school meetings prescribed in subsection (1)(c) or (1)(d) and, in addition, any other regular meeting days the trustees wish to establish; such meetings shall be conducted in school buildings or on other property belonging to the district.

(3) Special meetings of the trustees may be called by the chairman or any two members of the trustees by giving each member a 48-hour written notice of the meeting.

(4) No business shall be transacted by the trustees of a district unless it is transacted at a regular meeting or a properly called special meeting. A quorum for any meeting shall be a majority of the trustees' membership. All trustee meetings shall be public meetings, as prescribed by 2-3-201, except that the trustees may recess to an executive session under the provisions of 2-3-203.

History: En. 75-5930 by Sec. 59, Ch. 5, L. 1971; R.C.M. 1947, 75-5930.

20-3-323. District policy and record of acts. (1) The trustees of each district shall prescribe and enforce policies for the government of the district. In order to provide a comprehensive system of governing the district, the trustees shall:

(a) adopt the policies required by this title; and

(b) adopt policies to implement or administer the requirements of the general law, this title, the policies of the board of public education, and the rules of the superintendent of public instruction.

(2) The trustees shall keep a full and permanent record of all adopted policies and all other acts of the trustees. Minutes of each regular and special board meeting shall include wording of motions, voting records of each trustee present, and all other pertinent information, including a detailed statement of all expenditures of money with the name of any person or business to whom payment is made and showing the service rendered or goods furnished. A written copy of the minutes shall be made available within 5 working days following the approval of the minutes by the board at a cost of no more than 15 cents a page to be paid by those who request such a copy. One free copy of the minutes shall be provided to the local press within 5 working days following the approval of the minutes by the board. The board shall approve the minutes of each special and regular meeting no later than 1 month following the meeting if it meets on a regular monthly basis. If a board does not regularly meet on a monthly basis, it shall approve the minutes of each special and regular meeting at the next regular or special meeting. The approval of the minutes of a prior meeting shall not occur more than 40 days after the meeting, except that no board shall be required to meet to approve the minutes of a meeting at which no substantive business was conducted.

History: En. 75-5932 by Sec. 61, Ch. 5, L. 1971; amd. Sec. 1, Ch. 192, L. 1975; amd. Sec. 6, Ch. 266, L. 1977; R.C.M. 1947, 75-5932; amd. Sec. 1, Ch. 360, L. 1979.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

20-3-324. Powers and duties. As prescribed elsewhere in this title, the trustees of each district shall have the power and it shall be their duty to perform the following duties or acts:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board may deem necessary, accepting or rejecting such recommendation as the trustees shall in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel deemed necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and otherwise govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or an emergency budget of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) establish the ANB, foundation program, permissive levy, additional levy, cash reserve, and state impact aid amount for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous federal programs fund, building fund, lease or rental agreement fund, traffic education fund, and interlocal cooperative agreement fund in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, vocational education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make such reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when deemed advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to his child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

(22) procure and display outside daily in suitable weather at each school of the district an American flag which shall be not less than 4 feet by 6 feet; and

(23) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction.

History: (1), (3) thru (18), (23)En. Sec. 62, Ch. 5, L. 1971; amd. Sec. 1, Ch. 69, L. 1973; amd. Sec. 1, Ch. 280, L. 1973; Sec. 75-5933, R.C.M. 1947; (2), (19) thru (22)En. Sec. 63, Ch. 5, L.

1971; Sec. 75-5934, R.C.M. 1947; R.C.M. 1947, 75-5933(1) thru (18), 75-5934; amd. Sec. 1, Ch. 682, L. 1979; amd. Sec. 72, Ch. 575, L. 1981; amd. Sec. 2, Ch. 135, L. 1987; amd. Sec. 1, Ch. 145, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 135 in (13) changed fund name from "housing and dormitory fund" to "lease or rental agreement fund".

Chapter 145 at end of (21) inserted exception clause.

Cross-References

Montana Administrative Procedure Act not applicable, 2-4-102.

Cooperative agreements with Indian tribes, Title 18, ch. 11.

Pupils, Title 20, ch. 5.

School districts, Title 20, ch. 6.

Trustees of elementary and high school districts to have same powers and duties, 20-6-101.

School instruction and special programs, Title 20, ch. 7.

School finance, Title 20, ch. 9.

Duties of trustees relating to food services, 20-10-204.

School elections, Title 20, ch. 20.

Federal economic opportunity and poverty relief — districts authorized to receive, 53-8-101.

20-3-325. Clerk of the district. As provided in 20-3-321, the trustees shall employ and appoint a clerk of the district. The clerk of the district shall attend all meetings of the trustees to keep an accurate and permanent record of all the proceedings of each meeting. If the clerk is not present at a meeting, the trustees shall have one of their members or a district employee act as clerk for the meeting and such person shall supply the clerk with a certified copy of the proceedings. The clerk of the district also shall be the custodian of all documents, records, and reports of the trustees. Unless the trustees provide otherwise, the clerk shall:

(1) keep an accurate and detailed accounting record of all receipts and expenditures of the district in accordance with the financial administration provisions of this title; and

(2) prepare the annual trustees' report required under the provisions of 20-9-213(5).

History: En. 75-5935 by Sec. 64, Ch. 5, L. 1971; amd. Sec. 7, Ch. 266, L. 1977; R.C.M. 1947, 75-5935.

Cross-References

Execution of contracts of employment, 20-4-201, 20-4-401.

Signing of emergency budget, 20-9-165.

Countersigning of warrants, 20-9-221.

Execution of bonds, 20-9-433.

Notification of bond payments, 20-9-442.

Duty to prepare ballots, 20-20-401.

20-3-326 through 20-3-330 reserved.

20-3-331. Purchase of liability insurance. The trustees of any district may purchase insurance coverage for the district, trustees, and employees against liability for the death, injury, or disability of any person or damage to property.

History: En. 75-5939 by Sec. 68, Ch. 5, L. 1971; R.C.M. 1947, 75-5939; amd. Sec. 3, Ch. 425, L. 1979; amd. Sec. 73, Ch. 575, L. 1981; amd. Sec. 1, Ch. 15, L. 1985; amd. Sec. 2, Ch. 299, L. 1985.

20-3-332. Personal immunity and liability of trustees. (1) When acting in their official capacity at a regular or special meeting of the board or a committee thereof, the trustees of each district are individually immune from exemplary and punitive damages.

(2) The trustees of each district shall be responsible for the proper administration and utilization of all moneys of the district in accordance with the provisions of law and this title. Failure or refusal to do so shall constitute

grounds for removal from office. Those trustees consenting to illegal use of the moneys shall be jointly and individually liable to the district for any losses the district has realized. The county attorney shall prosecute any proceeding arising pursuant to this section, or a party seeking such action may retain private counsel. The party commencing the action shall be liable for the costs if the action fails.

History: En. 75-5941 by Sec. 70, Ch. 5, L. 1971; amd. Sec. 2, Ch. 91, L. 1973; R.C.M. 1947, 75-5941; amd. Sec. 1, Ch. 479, L. 1983.

Cross-References

State or other governmental entity immune from exemplary or punitive damages, 2-9-105.

Delivering items to successor, 20-1-203.

Trustee removal, 20-3-310.

Acceptance of emoluments, 20-7-608.

Costs, Title 25, ch. 10.

Joint and several liability — right of contribution, 27-1-703.

Official misconduct, 45-7-401.

20-3-333. Repealed. Sec. 14, Ch. 309, L. 1981.

History: En. 75-6309 by Sec. 122, Ch. 5, L. 1971; R.C.M. 1947, 75-6309(part).

20-3-334 and 20-3-335 reserved.

20-3-336. Single-member trustee districts — legislative intent — minority defined. (1) It is the intent of the legislature to provide a board of trustees of a school district with the option to:

(a) review the voting and population patterns of minorities of the school district, as determined by the most recent federal decennial census, voting records, and other pertinent information; and

(b) create single-member trustee districts within the school district if the board determines that the present trustee selection process does not serve the best interests of the electors of the district or ensure that the access of minority populations to the political process is not diluted in contravention of federal law.

(2) "Minority", as used in 20-3-337 and this section, means a minority whose rights are protected under section 2 of the Voting Rights Act of 1965, (42 U.S.C. 1973), as amended.

History: En. Sec. 1, Ch. 539, L. 1987.

20-3-337. Plan for creating single-member trustee districts. (1) The board of trustees of a school district may establish a procedure for studying the appropriateness of creating single-member trustee districts within the school district.

(2) If the board considers a single-member district plan, the plan must establish single-member districts that:

(a) are as compact in area and as equal in population as possible; and

(b) provide equitable voting rights for the minorities residing within the school district by ensuring that the access of minorities to the political process is not diluted in contravention of the Voting Rights Act Amendments of 1982, Public Law 97-205.

(3) If the board determines that it is in the best interest of the electors of the school district, it shall:

(a) propose creation of a single-member trustee district plan;

(b) schedule and hold a public hearing on the proposed plan; and

(c) publish in a newspaper of general circulation in the district a notice of the public hearing, including a map of the proposed single-member trustee district plan, and the reasons why the board believes that the plan satisfies the criteria set forth in subsection (2).

(4) After the public hearing is held, the board shall forward a copy of the proposed single-member trustee district plan to the secretary of state and the superintendent of public instruction for review and comment. The copy of the proposed plan must be accompanied by:

(a) a map indicating the circulation of the newspaper in which the notice required in subsection (3) was published;

(b) the published notice of the public hearing;

(c) a map of the proposed single-member trustee district plan; and

(d) a summary of any public comments to the board regarding the proposed plan.

(5) After receiving comments from the secretary of state and the superintendent of public instruction, the board of trustees may amend, revise, approve, or disapprove the proposed plan. If the plan is adopted by the board, it shall:

(a) inform the county superintendent of schools of its adoption;

(b) publish notice of the adoption in a newspaper of general circulation within the district, including identification of the boundaries of each new single-member trustee district and the implementation date of the plan; and

(c) file with the county clerk and recorder a certificate designating the boundary lines and limits of each single-member trustee district.

(6) All successors to the board of trustees must be elected in accordance with the adopted single-member trustee district plan.

(7) No change in the boundaries of a trustee district may be made within 3 months preceding a regular school election day as provided in 20-3-304.

History: En. Sec. 2, Ch. 539, L. 1987.

20-3-338. Trustees elected by single-member district. (1) At each annual election provided for in 20-3-304, each trustee candidate in a single-member trustee district must be a qualified elector of the trustee district and have resided in the trustee district to be represented for at least 1 year prior to becoming a candidate for the trustee position.

(2) Nomination of trustee candidates under the provisions of 20-3-305 and 20-3-344 must be by electors of the trustee district.

(3) The election of each trustee must be submitted to the electors in the trustee district who are qualified to vote under the provisions of 20-20-301.

History: En. Sec. 3, Ch. 539, L. 1987.

20-3-339 and 20-3-340 reserved.

20-3-341. Number of trustee positions in elementary districts. The number of trustee positions in each elementary district shall vary according to the district's classification, as established by 20-6-201:

(1) There shall be seven trustee positions in a first-class elementary district.

(2) There shall be five trustee positions in a second-class elementary district.

(3) There shall be three trustee positions in a third-class elementary district; however, upon the majority vote of the board of trustees, the number

may be increased to five trustee positions at the next trustee election, provided that notice of such action of the board of trustees be published by the clerk of the district in a newspaper of general circulation in the county prior to January 1 of the year of such trustee election.

History: **En. 75-5902 by Sec. 31, Ch. 5, L. 1971; amd. Sec. 1, Ch. 103, L. 1975; R.C.M. 1947, 75-5902(1).**

20-3-342. Determination of terms after creation or consolidation of elementary districts. Whenever the trustees are elected at one regular school election under the circumstances described in subsections (2)(a) and (2)(b) of 20-3-302, the members who are elected shall draw by lot to determine their terms of office. Such terms of office by trustee position shall be:

(1) three for 3 years, two for 2 years, and two for 1 year in a first-class elementary district;

(2) two for 3 years, two for 2 years, and one for 1 year in second-class elementary districts and third-class elementary districts having five trustee positions; or

(3) one for 3 years, one for 2 years, and one for 1 year in a third-class elementary district having three trustee positions.

History: **En. 75-5908 by Sec. 37, Ch. 5, L. 1971; amd. Sec. 3, Ch. 103, L. 1975; R.C.M. 1947, 75-5908.**

20-3-343. Determination of terms after change of district classification. Whenever the change of an elementary district classification requires the addition of trustee positions to the trustees of such district under the circumstance described in 20-3-302(2)(d), the members who are elected shall draw by lot to determine their terms of office which shall be one for 3 years and one for 2 years.

History: **En. 75-5910 by Sec. 39, Ch. 5, L. 1971; R.C.M. 1947, 75-5910.**

Cross-References

Elementary district classification, 20-6-201.

20-3-344. Nomination of candidates by petition in first-class elementary district. Except as provided in 20-3-338, any 20 electors, qualified under the provisions of 20-20-301, of any first-class elementary district may nominate by petition as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy shall be submitted to the clerk of the district not less than 40 days before the regular school election day at which he is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated shall also be indicated. The election shall be conducted with the ballot as specified in 20-3-306.

History: **En. 75-5914.1 by Sec. 1, Ch. 165, L. 1973; R.C.M. 1947, 75-5914.1; amd. Sec. 5, Ch. 539, L. 1987.**

Compiler's Comments

1987 Amendment: At beginning inserted exception clause referencing 20-3-338.

20-3-345 through 20-3-350 reserved.

20-3-351. Number of trustee positions in high school districts. (1) The trustees of a high school district, except a high school district operating a county high school, shall be composed of:

(a) the trustees of the elementary district where the high school building is located or, if there is more than one elementary district where high school buildings are located, the trustees of the elementary district designated by the high school boundary commission; and

(b) the additional trustee positions determined in accordance with 20-3-352.

(2) The trustees of a high school district operating a county high school shall be composed of seven trustee positions.

History: En. 75-5902 by Sec. 31, Ch. 5, L. 1971; amd. Sec. 1, Ch. 103, L. 1975; R.C.M. 1947, 75-5902(2), (3).

Cross-References

Definition of elementary and high school districts, 20-6-101.

Elementary district classification, 20-6-201.

High school district classification, 20-6-301.

20-3-352. Request and determination of number of high school district additional trustee positions. (1) As provided in 20-3-351(1)(b), each high school district, except a high school district operating a county high school, may have additional trustee positions when the trustees of a majority of the elementary districts with territory located in the high school district, but without representation on the high school district trustees under the provision of 20-3-351(1)(a), request the establishment of such additional trustee positions.

(2) A request for additional trustee positions shall be made to the county superintendent by a resolution of the trustees of each elementary district. When a resolution has been received from a majority of the elementary districts without representation on the high school district trustees, the county superintendent shall determine the number of additional trustee positions for the affected high school district in accordance with the following procedure:

(a) The taxable valuation of the elementary district which has its trustees placed on the high school trustees shall be divided by the number of positions on the trustees of such elementary district to determine the taxable valuation per trustee position.

(b) The taxable valuation used for the calculation in subsection (2)(a) above shall be subtracted from the taxable valuation of the high school district to determine the taxable valuation of the territory of the high school district without representation on the high school district trustees.

(c) The taxable valuation determined in subsection (2)(b) above shall be divided by the taxable valuation per trustee position calculated in subsection (2)(a) above. The resulting quotient shall be rounded off to the nearest whole number.

(3) The number determined in subsection (2)(c) above shall be the number of additional trustee positions, except that the number of additional trustee positions shall not exceed four in a first- or second-class high school district or two in a third-class high school district except when two-thirds or more of the high school enrollment of the high school district and two-thirds or more of the taxable valuation of the high school district are located outside of the elementary district which has its trustees placed on the high school district trustees. When this situation exists, three additional trustees shall be elected from the elementary school districts where the high school is not

located and one additional trustee shall be elected at large in the high school district.

History: En. 75-5903 by Sec. 32, Ch. 5, L. 1971; amd. Sec. 1, Ch. 328, L. 1973; R.C.M. 1947, 75-5903.

20-3-353. Establishment and purpose of trustee nominating districts. (1) After the county superintendent has determined the number of additional trustee positions, he shall establish trustee nominating districts in that portion of the high school district without representation on the high school trustees. There shall be one trustee nominating district for each additional trustee position, except the additional trustee-at-large. Unless it is impossible, the trustee nominating district boundaries shall be coterminous with elementary district boundaries.

(2) The purpose of the trustee nominating district shall be to establish a representative district for the nomination and election of a resident of such district to be an additional member of the trustees of a high school district. The electors qualified to vote in the high school district under the provisions of 20-20-301 and who reside in the trustee nominating district shall be the only electors who may vote for the additional trustee representing such district. They also shall be permitted to vote for a trustee position at large, if there is one, but for no other high school trustee position.

(3) Any additional trustee position established under the provisions of this section shall be filled in a manner prescribed under the provisions of 20-3-309. Each additional trustee position filled by appointment under this section shall be subject to election at the next regular school election.

History: En. 75-5904 by Sec. 33, Ch. 5, L. 1971; R.C.M. 1947, 75-5904.

Cross-References

Regular school election day and special school elections, 20-20-105.

20-3-354. Redetermination of additional trustee positions and subsequent adjustments. Whenever there is a revision of the taxable valuation of the high school district or the elementary districts within it or there is a reclassification of the elementary district which has its trustees placed on the high school district board of trustees, the county superintendent shall redetermine the number of additional trustee positions for the high school district in accordance with 20-3-352. If there is a change in the allowable number of additional trustee positions, the county superintendent shall reestablish the trustee nominating districts in accordance with 20-3-353. If the number of additional trustee positions is less than the previous number of positions, the county superintendent shall designate which present additional positions are to terminate upon his order reestablishing the trustee nominating districts. If the number of additional trustee positions is more than the previous number of positions, such additional trustee positions shall be filled in the manner prescribed under the provisions of 20-3-309. Each additional trustee position filled by appointment under this section shall be subject to election at the next regular school election.

History: En. 75-5905 by Sec. 34, Ch. 5, L. 1971; R.C.M. 1947, 75-5905; amd. Sec. 2, Ch. 384, L. 1979.

20-3-355. Determination of terms after establishment or reestablishment of additional trustee positions. (1) Whenever all of the additional trustee positions are subject to election at one regular school election under the circumstance described in 20-3-302(2)(c), the members who are elected shall draw by lot to determine their terms of office. Such terms of office by number of members elected shall be:

(a) two for 3 years, if four are elected;

(b) one for 3 years, if one, two, or three are elected;

(c) one for 2 years, if two, three, or four are elected; and

(d) one for 1 year, if three or four are elected.

(2) Whenever the reestablishment of the additional trustee positions for a high school district under the provisions of 20-3-354 results in an increased number of additional trustee positions, the members who are elected at the next regular school election shall draw by lot to determine their terms of office and such terms shall be determined in accordance with the additional trustee terms prescribed in this section.

History: En. 75-5909 by Sec. 38, Ch. 5, L. 1971; R.C.M. 1947, 75-5909.

20-3-356. Membership of elected trustees of high school district operating county high school and nomination of candidates. (1) The trustees of a high school district operating a county high school shall be composed of the following:

(a) four trustee positions filled by members residing in the elementary district where the county high school building is located; and

(b) three trustee positions filled by members one of whom resides in each of the three trustee nominating districts in the territory of the high school district outside of the elementary district where the county high school building is located. The county superintendent shall establish the nominating districts, and, unless it is impossible, such districts shall have coterminous boundaries with elementary district boundaries.

(2) The provisions of 20-3-305 shall govern the nomination of candidates for the trustee election prescribed in this section.

History: En. 75-5924 by Sec. 53, Ch. 5, L. 1971; amd. Sec. 4, Ch. 122, L. 1975; R.C.M. 1947, 75-5924.

Cross-References

Rules for determining residence, 1-1-215.

Transactions after approved county high school unification, 20-6-313.

20-3-357 through 20-3-360 reserved.

20-3-361. Joint board of trustees organization and voting membership. (1) The board of trustees of two or more school districts may form a joint board of trustees for the purpose of coordinating any educational program or support service of the districts. A joint board of trustees may coordinate only those programs and services agreed to by the participating boards of trustees.

(2) When a joint board of trustees is formed, all of the members of the districts' trustees shall be members of the joint board of trustees and each member shall have the right to participate in the meetings, but voting on matters considered by the joint board shall be limited by the provisions of this section.

(3) At the first meeting of the joint board of trustees, there shall be a chairman of the joint board of trustees selected from among the membership. A secretary of the joint board shall be selected from the membership. The chairman, when selected as a voting member, shall not be disqualified from voting because of his position of chairman of the board. The secretary shall not be a voting member except that he shall cast the deciding vote when three successive ballots have resulted in a tie vote of the joint board of trustees.

(4) The voting membership of the joint board of trustees shall be equalized among the trustee membership of the participating districts. After the selection of the chairman and the secretary, if necessary, the voting membership shall be:

(a) all of the membership of the board of trustees of the smallest class of district, according to 20-6-201 or 20-6-301, unless one of its members is selected as secretary, in which case such member shall not be a voting member; and

(b) the members of the board of trustees of the other district or districts who are selected by such trustees as voting members of the joint board in a number equal to the number of voting members of the district as established under subsection (4)(a) above. The names of the voting membership selected by the trustees shall be submitted in writing to the secretary of the board and shall be the only members of such district's trustees eligible to vote on joint board matters unless such list is revised in writing by the trustees.

(5) Each voting member shall be entitled to cast one vote, individually, upon every matter submitted to the joint board for a vote.

(6) A joint board must remain in existence for at least 1 school year and may not be dissolved until the end of a school year.

History: En. 75-5928 by Sec. 57, Ch. 5, L. 1971; amd. Sec. 6, Ch. 122, L. 1975; R.C.M. 1947, 75-5928; amd. Sec. 1, Ch. 308, L. 1987.

Compiler's Comments

1987 Amendment: At beginning of (1) substituted language relating to trustees of two or more districts for former language that read: "Whenever the trustees of a high school district operating a county high school and the trustees of the elementary district where the county high school building is located deem it to be within the best interests of the two districts, they" and near end of first sentence, after "program", inserted "or support service"; at end of (1) inserted second sentence; in (4)(a) substituted "board of trustees of the smallest class of district" for "elementary district trustees" and after "district" inserted "according to 20-6-201 or 20-6-301"; in (4)(b) substituted "board of trustees of the other district or districts" for "high school district trustees", after "voting members of the" substituted "district" for "elementary district trustees", changed reference to subsection (3)(a) to subsection (4)(a), in second sentence, before "trustees shall", deleted "high school", and at end deleted "high school" before "trustees"; inserted (6); and made minor changes in phraseology.

Cross-References

Authority of joint board to operate junior high school, 20-6-505.

20-3-362. Powers of joint board of trustees. (1) When a joint board of trustees is formed as provided by 20-3-361, it shall have the power to:

(a) jointly employ a district superintendent under the provisions of 20-4-401;

(b) jointly employ teachers and specialists under the provisions of 20-4-201;

(c) open a junior high school under the provisions of 20-6-505 if the trustees of a county high school and the trustees of an elementary district have formed a joint board of trustees;

(d) prescribe and administer joint administrative policy;

(e) jointly provide any program or service authorized under 20-3-324; and

(f) prorate all items of joint expense among the school districts, provided that a controversy over any decision by the joint board to prorate joint costs may, within 30 days, be appealed by the trustees of any district to the superintendent of public instruction for a final decision as to what constitutes a fair and just proration of the cost.

(2) The joint board of trustees shall not have the power to transact business that is not specifically related to the joint administration of the districts.

History: En. 75-5929 by Sec. 58, Ch. 5, L. 1971; R.C.M. 1947, 75-5929; amd. Sec. 3, Ch. 511, L. 1979; amd. Sec. 2, Ch. 308, L. 1987.

Compiler's Comments

1987 Amendment: At end of (1)(c), after "20-6-505", inserted last clause; inserted (1)(e); in (1)(f), before "school districts", deleted "elementary and high"; and made minor changes in phraseology.

CHAPTER 4

TEACHERS, SUPERINTENDENTS, AND PRINCIPALS

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Chapter Cross-References

Teachers' retirement system, Title 19, ch. 4.

Part 1

Certification of Teaching and Supervisory Personnel

Part Cross-References

Instructional aide funding, 20-9-322.

20-4-101. System and definitions of teacher and specialist certification — student teacher exception. (1) In order to establish a uniform system of quality education and to ensure the maintenance of professional standards, a system of teacher and specialist certification shall be established and maintained under the provisions of this title and no person shall be permitted to teach in the public schools of the state until he has obtained a teacher certificate or specialist certificate or the district has obtained an emergency authorization of employment from the state.

(2) As used in this part, "teacher or specialist certificate" means a certificate issued or applied for under 20-4-106. The term "teacher or specialist" refers to a person certified under 20-4-106.

(3) The above certification requirement shall not apply to a student teacher who is hereby defined as a student enrolled in an institution of higher learning approved by the board of regents of higher education for teacher training and who is jointly assigned by such institution of higher learning and the governing board of a district or a public institution to perform practice teaching in a nonsalaried status under the direction of a regularly employed and certificated teacher.

(4) A student teacher, while serving such nonsalaried internship under the supervision of a certificated teacher, shall be accorded the same protection of the laws as that accorded a certificated teacher and shall, while acting as such student teacher, comply with all rules of the governing board of the district or public institution and the applicable provisions of 20-4-301 relating to the duties of teachers.

History: En. 75-6001 by Sec. 71, Ch. 5, L. 1971; amd. Sec. 1, Ch. 396, L. 1973; R.C.M. 1947, 75-6001; amd. Sec. 4, Ch. 511, L. 1979; amd. Sec. 2, Ch. 227, L. 1987.

Compiler's Comments

1987 Amendment: Inserted (2).

Cross-References

Duty of Board of Public Education to adopt teacher certification policies, 20-2-121.

Health education course, including drug and alcohol abuse instruction, Title 20, ch. 25, part 6.

20-4-102. Board of public education policies. To effect an orderly and uniform system of teacher and specialist certification, the board of public education shall, upon the recommendation of the superintendent of public instruction and in accordance with the provisions of this title, prescribe and adopt policies for the issuance of teacher or specialist certificates. Such policies shall provide for:

(1) reasonable training and experience requirements for teacher, specialist, supervisor, and administrative certificates and endorsements thereon as provided by the certification classification in 20-4-106;

(2) the renewal of teacher or specialist certificates based on the same conditions prescribed for the initial issuance of certificates;

(3) the conduct of hearings on teacher or specialist certification revocation, suspension, or denial;

(4) the issuance of emergency authorization to a district to employ a person who is not the holder of a valid teacher certificate as an instructor of pupils; and

(5) any other policy, not inconsistent with the law, which is necessary for the proper operation of a system of teacher and specialist certification.

History: En. 75-6002 by Sec. 72, Ch. 5, L. 1971; R.C.M. 1947, 75-6002; amd. Sec. 5, Ch. 511, L. 1979.

Cross-References

Duty of Board of Public Education to adopt teacher certification policies, 20-2-121.

20-4-103. Issuance of teacher or specialist certificates. The superintendent of public instruction shall issue all teacher and specialist certificates in the state of Montana. In issuing teacher or specialist certificates, the superintendent of public instruction shall comply with the provisions of this title and the teacher and specialist certification policies adopted by the board of public education. The superintendent of public instruction shall not issue a teacher or specialist certificate to any person who does not satisfy the qualifications or other requirements of this title and of the board of public education policies for teacher or specialist certification.

History: En. 75-6003 by Sec. 73, Ch. 5, L. 1971; R.C.M. 1947, 75-6003; amd. Sec. 6, Ch. 511, L. 1979.

Cross-References

Duty of Board of Public Education to adopt teacher certification policies, 20-2-121.

Duty to certify special education teachers, 20-7-403.

20-4-104. Qualifications. (1) Any person may be certified as a teacher when he satisfies the following qualifications:

(a) He is 18 years of age or older but is not more than 70 years of age.

(b) He has a certificate of a licensed physician attesting to his satisfactory health.

(c) He is of good moral and professional character.

(d) He has completed the teacher education program of a unit of the Montana university system or an essentially equivalent program at an accredited institution of equal rank and standing as that of any unit of the Montana university system, and such training shall be evidenced by at least a bachelor's degree and a certification of the completion of the teacher education program, except as provided for in 20-4-106(1)(d).

(e) He has subscribed to the following oath or affirmation before an officer authorized by law to administer oaths:

"I solemnly swear (or affirm) that I will support The Constitution of the United States of America and The Constitution of the State of Montana."

(2) Any person may be certified as a specialist when he satisfies the requirements of subsections (1)(a) through (1)(c) and the requirement for a specialist certificate provided in 20-4-106(2).

History: En. 75-6004 by Sec. 74, Ch. 5, L. 1971; R.C.M. 1947, 75-6004; amd. Sec. 7, Ch. 511, L. 1979; amd. Sec. 1, Ch. 165, L. 1981; amd. Sec. 1, Ch. 266, L. 1983.

Cross-References

Constitutional oath of office, Art. III, sec. 3, Mont. Const.

Oaths, Title 1, ch. 6, part 1.

20-4-105. Repealed. Sec. 2, Ch. 165, L. 1981.

History: En. 75-6005 by Sec. 75, Ch. 5, L. 1971; R.C.M. 1947, 75-6005; amd. Sec. 8, Ch. 511, L. 1979.

20-4-106. Classifications of teacher and specialist certificates. (1) The superintendent of public instruction shall issue teacher certificates and the board of public education shall adopt teacher certification policies on the basis of the following classifications of teacher certificates:

(a) The class 1 professional certificate may be issued to an otherwise qualified applicant who has completed a teacher education program which includes a bachelor's degree and a minimum of 1 year of study beyond such degree in a unit of the Montana university system or an equivalent institution. The professional certificate may be endorsed for elementary instruction, secondary instruction, or both, and for specified subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher certification endorsement.

(b) The class 2 standard certificate may be issued to an otherwise qualified applicant who has completed a 4-year teacher education program and who has been awarded a bachelor's degree by a unit of the Montana university system or an equivalent institution. The standard certificate may be endorsed for elementary instruction, secondary instruction, or both, and for specified subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher certification endorsement.

(c) The class 3 administrative and supervisory certificate may be issued to an otherwise qualified applicant who is eligible for a teacher certificate endorsed for teaching in the school or schools in which he would be an administrator or he would supervise. The applicant also shall possess the training and experience required by the policies of the board of public education for an endorsement as superintendent, principal, or supervisor.

(d) The class 4 vocational, recreational, or adult education certificate may be issued to an otherwise qualified applicant who has the qualifications of training and experience required by the United States office of education or the qualifications required by the special needs of the several vocational, recreational, or adult education fields and who can qualify under the policy of the board of public education for the issuance of this classification of teacher certification.

(e) The class 5 provisional certificate may be issued to an otherwise qualified applicant who can provide satisfactory evidence of his intent to qualify in the future for a class 1 or a class 2 certificate and who has completed a 4-year college program or its equivalent and holds a bachelor's degree from a unit of the Montana university system or its equivalent. The provisional certificate may be endorsed for elementary instruction, secondary instruction, or both, and for special subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher or specialist certification endorsement.

(2) The superintendent of public instruction shall issue specialist certificates, and the board of public education shall adopt specialist certification policies. The specialist certificate may be issued to an otherwise qualified applicant who has the training, experience, and license required under the standards of the board of public education for the certification of a profession other than the teaching profession.

(3) For purposes of evaluating the qualifications of applicants for either teacher or specialist certificates, a year means the instructional period consisting of three quarters or two semesters or other terms which are recognized as an academic year by any unit of the Montana university system or equivalent institution.

History: En. 75-6006 by Sec. 76, Ch. 5, L. 1971; R.C.M. 1947, 75-6006; amd. Sec. 9, Ch. 511, L. 1979; amd. Sec. 1, Ch. 175, L. 1983.

Cross-References

Duty of Board of Public Education to adopt certification policies, 20-2-121.

Duty of Superintendent of Public Instruction to certify special education teachers, 20-7-403.

20-4-107. Outstanding teacher certificates. (1) No provisions of this title shall affect or impair the validity of any certificate that is in force on January 26, 1971, or the rights and privileges of the holders by virtue thereof, except that any certificates may be suspended or revoked for any of the causes and by the procedures provided by law.

(2) Any holder of an elementary school standard certificate issued prior to July 1, 1959, under the previous statute and in force on July 1, 1959, shall be eligible for renewal of such certificate in accordance with the policies of the board of public education until the holder qualifies for the class 2 standard certificate as provided in 20-4-106.

(3) Any holder of a class 5 certificate in force on June 30, 1966, or issued between July 1, 1966, and December 31, 1966, shall be eligible for renewal of such certificate in accordance with the policies of the board of public education until the holder qualifies for the class 2 standard certificate as provided in 20-4-106.

History: En. 75-6007 by Sec. 77, Ch. 5, L. 1971; R.C.M. 1947, 75-6007.

20-4-108. Term of teacher and specialist certificates — renewal. (1) Any teacher or specialist certificate issued by the superintendent of public instruction shall bear the dates of issue and validity and shall be valid for a term of 5 school fiscal years, except that class 5 provisional certificates shall be valid for the number of years, up to a maximum of 5 years, provided by the policies of the board of public education. The period of validity for any certificate shall begin on July 1 immediately preceding the date of issue, except that a teacher or specialist who applies for certification after March 1 may, upon request, have the period of validity of the certificate begin on July 1 following the date of application.

(2) Teacher and specialist certificates shall be renewed for similar periods of time on the basis of the board of public education policies for teacher and specialist certification renewal.

History: En. 75-6008 by Sec. 78, Ch. 5, L. 1971; amd. Sec. 1, Ch. 171, L. 1977; R.C.M. 1947, 75-6008; amd. Sec. 10, Ch. 511, L. 1979; amd. Sec. 1, Ch. 224, L. 1983.

20-4-109. Fees for teacher and specialist certificates. (1) Each person applying for the issuance or renewal of a teacher or specialist certificate shall pay a fee not to exceed $4 for each school fiscal year that the certificate will be valid. In addition to this fee, each person who has never held any class of Montana teacher or specialist certificate or for whom an emergency authorization of employment has never been issued shall pay a filing fee of $4. Such fees shall be paid to the superintendent of public instruction, who shall deposit the fees with the state treasurer in the following manner:

(a) $2 to the credit of the state special revenue fund created in subsection (2);

(b) $2 to the general fund.

(2) There is an account in the state special revenue fund. Money from fees for teacher or specialist certificates required in subsection (1) must be deposited in the account. The money in the account is statutorily appropriated, as provided in 17-7-502, to the board of public education for expenses for the certification standards and practices advisory council created in 2-15-1522.

History: En. 75-6009 by Sec. 79, Ch. 5, L. 1971; R.C.M. 1947, 75-6009; amd. Sec. 11, Ch. 511, L. 1979; amd. Sec. 5, Ch. 465, L. 1987.

Compiler's Comments

1987 Amendment: In (1) in first sentence, following "fee", substituted "not to exceed $4" for "of $2", at end of second sentence substituted "$4" for "$2", and in third sentence, after "state treasurer", inserted "in the following manner"; in (1)(a) and (1)(b) allocated fee; and inserted (2).

20-4-110. Suspension, revocation, and denial — appeals. (1) The board of public education may suspend or revoke the teacher or specialist certificate of any person for any of the following reasons:

(a) making any statement of material fact in the application for a certificate which the applicant knows to be false;

(b) any reason that would have required or authorized the denial of the teacher or specialist certificate to the person if it had been known at the time the certificate was issued;

(c) incompetency;

(d) gross neglect of duty;

(e) conviction of, entry of a guilty verdict, a plea of guilty, or a plea of no contest to a criminal offense involving moral turpitude in this state or any other state or country;

(f) immoral conduct related to the teaching profession;

(g) substantial and material nonperformance of the employment contract between the teacher or specialist and the trustees of a district without good cause or the written consent of the trustees; or

(h) denial, revocation, suspension, or surrender of a teacher or specialist certificate in another state for any reason constituting grounds for similar action in this state.

(2) The board may initiate proceedings under this section if a request for the suspension or revocation of the teacher or specialist certificate of any person is made to it by:

(a) the trustees of a district as to a teacher or specialist employed by that district within the 12 months immediately preceding receipt of the request by the board of public education; or

(b) the superintendent of public instruction.

(3) (a) If the employment relationship between a school district and a teacher or specialist is terminated or not renewed because the trustees have reason to believe that the teacher or specialist engaged in conduct described in subsection (1)(e) or (1)(f), the trustees shall make a written report to the superintendent of public instruction describing the circumstances of the termination or nonrenewal of the employment relationship.

(b) The superintendent shall review the report and may conduct further investigation. If he is satisfied that sufficient grounds exist, he may request action by the board of public education under subsection (2)(b). The request must be brought within 1 year after discovery of the events that gave rise to the report.

(c) The trustees and the superintendent shall ensure the confidentiality of the report.

(d) The trustees and the superintendent and their agents and employees are immune from suit for actions taken in good faith under this section with respect to the report.

(4) The board shall give a 30-day written notification to any person when the board intends to consider the suspension or revocation of his certificate. The board shall conduct an investigation of the reasons for the suspension or revocation charge and then, if the investigation warrants further action, conduct a hearing in the manner provided by board policies. At the hearing the board shall afford the person an opportunity to defend himself and his qualifications against the charge.

(5) After a hearing, the board may suspend or revoke the person's teacher or specialist certificate, except that in the case of a first violation under subsection (1)(g), the maximum penalty is a 2-year suspension of the person's certificate.

(6) Whenever the superintendent of public instruction denies the issuance or the renewal of a teacher or specialist certificate, the applicant may appeal the denial to the board of public education. The board shall hear the appeal in the same manner provided in this section for suspension or revocation and in accordance with the policies of the board. The decision of the board shall be final.

History: En. 75-6010 by Sec. 80, Ch. 5, L. 1971; R.C.M. 1947, 75-6010; amd. Sec. 1, Ch. 240, L. 1979; amd. Sec. 12, Ch. 511, L. 1979; amd. Sec. 1, Ch. 227, L. 1987.

Compiler's Comments

1987 Amendment: In (1) substituted "may" for "shall have the power and authority to"; in (1)(e), after "conviction", deleted "in this state or any other state or country", inserted "entry of a guilty verdict, a plea of guilty, or a plea of no contest to", and after "turpitude" inserted "in this state or any other state or country"; inserted (1)(f); near beginning of (2) substituted "may" for "shall"; at end of (2)(b) deleted "as to a teacher or specialist not employed by any district within the 12 months immediately preceding receipt of the request by the board"; inserted (3); near beginning of (5), before "hearing", deleted "full investigation and proper"; and made minor changes in phraseology.

Special Vote Requirement — 1987 Amendment: Section 4, Ch. 227, L. 1987, provided: "Because proposed subsection (3)(d) of 20-4-110 grants immunity to the superintendent of public instruction and school district trustees, a vote of two-thirds of the members of each house is required for the enactment of proposed subsection (3)(d). If the bill passes but fails to receive a vote of two-thirds of the members of each house, then proposed subsection (3)(d) of 20-4-110 is deleted and the remaining parts of this act are valid." Chapter 227 was passed by a vote of 94-0 in the House of Representatives and 48-2 in the Senate.

Cross-References

False swearing, 45-7-202.

Unsworn falsification to authorities, 45-7-203.

20-4-111. Emergency authorization of employment. (1) Any district may request from the superintendent of public instruction an emergency authorization of employment for a person who is not the holder of a valid teacher or specialist certificate as an instructor of pupils when such district cannot secure the services of a person holding a valid certificate. The person shall have previously held a valid teacher or specialist certificate or shall meet the standards of preparation prescribed by the policies of the board of public education for and during such emergency. Such emergency authorization of employment shall indicate:

(a) the district to which such authorization is issued;

(b) the person whom the district is authorized to employ;

(c) the endorsement for elementary or secondary instruction and the specific subject fields for which authorization to employ such person is given; and

(d) the school fiscal year for which such emergency authorization of employment is given.

(2) Emergency authorization of employment of a person shall be valid for the school fiscal year identified on such authorization and may be renewed in accordance with the board of public education policies. A fee of $2 and, if no teacher or specialist certificate or emergency authorization of employment has ever been issued for such person, a filing fee of $2 shall be paid for the issuance of an emergency authorization of employment. The superintendent of public instruction shall deposit the fees with the state treasurer to the credit of the general fund.

(3) Emergency authorization of employment of a person may be revoked for good cause in accordance with the provisions of 20-4-110.

History: En. 75-6011 by Sec. 81, Ch. 5, L. 1971; R.C.M. 1947, 75-6011; amd. Sec. 13, Ch. 511, L. 1979.

20-4-112 through 20-4-120 reserved.

20-4-121. Interstate agreement on qualification of educational personnel. The interstate agreement on qualification of educational personnel is enacted into law and entered into with all jurisdictions legally joining therein in the form substantially as follows:

Article I. Purpose — Findings — Policy

(1) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching

profession. It is the purpose of this agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it and to authorize specific interstate educational personnel contracts to achieve that end.

(2) The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators are lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states of origin, can increase the available educational resources. Participation in this compact can increase the availability of educational manpower.

Article II. Definitions

As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise, the following definitions apply:

(1) "Educational personnel" means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

(2) "Designated state official" means the educational official of a state selected by that state to negotiate and enter into, on behalf of his state, contracts pursuant to this agreement.

(3) "Accept" or any variant thereof means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.

(4) "State" means a state, territory, or possession of the United States, the District of Columbia, or the commonwealth of Puerto Rico.

(5) "Originating state" means a state (and the subdivisions thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

(6) "Receiving state" means a state (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

Article III. Interstate Educational Personnel Contracts

(1) The designated state official of a party state may make one or more contracts on behalf of his state with one or more other party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it and the subdivisions of those states with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this article only with states in which he finds that there are programs of education, certification standards, or other acceptable qualifications that assure preparation or qualification of

educational personnel on a basis sufficiently comparable even though not identical to that prevailing in his own state.

(2) Any such contract shall provide for:

(a) its duration;

(b) the criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state;

(c) such waivers, substitutions, and conditional acceptance as shall aid the practical effectuation of the contract without sacrifice of basic educational standards; and

(d) any other necessary matters.

(3) No contract made pursuant to this agreement shall be for a term longer than 5 years, but any such contract may be renewed for like or lesser periods.

(4) Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.

(5) The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

(6) A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report not less than once a year to the heads of the appropriate education agencies of the contracting states.

Article IV. Approved and Accepted Programs

(1) Nothing in this agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

(2) To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

Article V. Interstate Cooperation

The party states agree that:

(1) they will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this agreement; and

(2) they will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this

purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

Article VI. Agreement Evaluation

The designated state officials of any party states may meet from time to time as a group to evaluate progress under the agreement and to formulate recommendations for changes.

Article VII. Other Arrangements

Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel.

Article VIII. Effect — Withdrawal

(1) This agreement shall become effective when enacted into law by two states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

(2) Any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until 1 year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

(3) No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

Article IX. Construction — Severability

This agreement shall be liberally construed so as to effectuate the purpose thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any state or of the United States or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement is held to be contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters.

History: En. 75-6012 by Sec. 1, Ch. 328, L. 1977; R.C.M. 1947, 75-6012.

20-4-122. Designated official for purposes of interstate agreement. The designated state official for this state is the state superintendent of public instruction. The state superintendent of public instruction shall enter into contracts pursuant to Article III of the agreement only after approval of the specific text thereof by the board of public education.

History: En. 75-6013 by Sec. 2, Ch. 328, L. 1977; R.C.M. 1947, 75-6013.

20-4-123. Preservation and publication of contracts made pursuant to interstate agreement. True copies of all contracts made on behalf of this state pursuant to the agreement shall be kept on file in the office of the state superintendent of public instruction. The state superintendent of public instruction shall publish all such contracts in convenient form.

History: **En. 75-6014 by Sec. 3, Ch. 328, L. 1977; R.C.M. 1947, 75-6014.**

20-4-124 through 20-4-130 reserved.

20-4-131. Definitions. As used in 2-15-1522 and 20-4-131 through 20-4-133, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Approved teacher education program" means a program that is offered by an accredited teacher education institution and approved by the board of public education.

(2) "Council" means the certification standards and practices advisory council created in 2-15-1522.

(3) "Specialist" means a person employed by a school district in a profession other than the teaching profession.

History: **En. Sec. 1, Ch. 465, L. 1987.**

20-4-132. Meetings — assistance. (1) The council shall meet quarterly and at other times as may be required for the proper conduct of the business of the council at the call of the chairman.

(2) The council may adopt rules for the conduct of its business.

(3) The council shall keep a record of its proceedings.

(4) The council may request research, administrative, and clerical staff assistance from the board of public education.

(5) The council shall select a chairman and a vice-chairman from its appointed members.

(6) A quorum for a meeting is not less than four council members.

(7) Council members are entitled to travel expenses incurred for each day of attendance at council meetings or in the performance of any duty or service as a council member in accordance with 2-18-501 through 2-18-503.

History: **En. Sec. 3, Ch. 465, L. 1987.**

20-4-133. Duties of the council. (1) The council shall study and make recommendations to the board of public education in the following areas:

(a) teacher certification standards, including but not limited to precertification training and education requirements and certification renewal requirements and procedures;

(b) administrator certification standards, including but not limited to precertification training and education requirements and certification renewal requirements and procedures;

(c) specialist certification standards, including but not limited to precertification training and education requirements and certification renewal requirements and procedures;

(d) feasibility of establishing standards of professional practices and ethical conduct;

(e) the status and efficacy of approved teacher education programs in Montana; and

(f) policies related to the denial, suspension, and revocation of teaching certification and the appeals process. For the purpose of preparing recommendations in this area, the council is authorized to review the individual cases and files that have been submitted to the board of public education.

(2) The council shall submit a written report annually to the board of public education with its recommendations for the above areas. The council may submit recommendations to the board of public education at other times that the council considers appropriate.

(3) The board of public education shall:

(a) at a regularly scheduled meeting, consider any recommendations and reports of the council; and

(b) approve, disapprove, or modify each recommendation of the council by majority vote of the board.

History: En. Sec. 4, Ch. 465, L. 1987.

Part 2

Teacher Employment — Tenure — Indian Studies

20-4-201. Employment of teachers and specialists by contract. (1) The trustees of any district shall have the authority to employ any person as a teacher or specialist, but only a person who holds a valid Montana teacher or specialist certificate or for whom an emergency authorization of employment has been issued that qualifies such person to perform the duties prescribed by the trustees for the position of employment. Each teacher or specialist shall be employed under written contract, and each contract of employment shall be authorized by a proper resolution of the trustees and shall be executed in duplicate by the chairman of the trustees and the clerk of the district in the name of the district and by the teacher or specialist.

(2) No contract of employment with a teacher or specialist shall require such teacher or specialist to teach more than 5 days a week or on any holiday recognized by 20-1-305. No deduction shall be made from a teacher's or specialist's salary by reason of the fact that a holiday falls on a school day. Any teacher's or specialist's contract made in conflict with the 5-days-per-week provision of this section shall not be enforceable against the teacher or specialist.

(3) Whenever the board of trustees of two or more school districts form a joint board of trustees under the provisions of 20-3-361, such joint board of trustees may execute a contract of employment with a teacher or specialist who shall serve the districts. When such a contract is executed, the districts shall prorate the compensation provided by such contract on the basis of the total number of instructional hours expended by such teacher or specialist within each district.

(4) Any contract executed under the provisions of this section may contain the oath or affirmation prescribed in 20-4-104, and the teacher or specialist shall subscribe to such oath or affirmation before an officer authorized by law to administer oaths.

History: En. 75-6102 by Sec. 83, Ch. 5, L. 1971; R.C.M. 1947, 75-6102; amd. Sec. 14, Ch. 511, L. 1979; amd. Sec. 3, Ch. 308, L. 1987.

Compiler's Comments

1987 Amendment: Near beginning of (3), before "trustees", inserted "board of" and after "of" substituted "two or more school district" for "a county high school and the trustees of the elementary district where the county high school is located"; and made minor changes in phraseology.

Cross-References

Discrimination on account of religious ideas prohibited, Art. II, sec. 4, Mont. Const.

Oaths, Title 1, ch. 6.
Nepotism, Title 2, ch. 2, part 3.
Depriving members of organized militia of employment, 10-1-603.
Leave of absence of public employees attending training camp, 10-1-604.
Reemployment of veterans, Title 10, ch. 2, part 2.
Powers of joint board of trustees, 20-3-362.
Veterans' and handicapped persons' public employment preference — not applicable to schools, Title 39, ch. 30.

20-4-202. Teacher and specialist certification registration. (1) Any person employed as a teacher, specialist, principal, or district superintendent shall register his certificate or the district shall register its emergency authorization of employment for a teacher with the county superintendent of the county wherein he is employed in order to validate his employment status and permit payment under his employment contract. If a teacher or specialist does not register his certificate with the county superintendent within 60 calendar days after he begins to perform his services, he shall not be eligible to receive any further compensation under his contract of employment until he has registered his certificate. After the schools of a district have been open for 60 calendar days in the current school fiscal year, the county superintendent shall notify each district of the county of each teacher or specialist who has registered his current valid certificate, and the district shall not pay any teacher who has not registered his certificate until the county superintendent does notify the district of such registration.

(2) A teacher or specialist employed by a joint district shall register his certificate with the county superintendent of the county in which he is working. A teacher or specialist employed by a special education cooperative shall register his certificate with the county superintendent of the county in which the special education cooperative is based.

History: En. 75-6106 by Sec. 87, Ch. 5, L. 1971; amd. Sec. 3, Ch. 277, L. 1977; R.C.M. 1947, 75-6106; amd. Sec. 15, Ch. 511, L. 1979; amd. Sec. 1, Ch. 330, L. 1987.

Compiler's Comments
1987 Amendment: In (2) inserted second sentence.

Cross-References
Duty of County Superintendent to register teacher or specialist certificates, 20-3-205.

20-4-203. Teacher tenure. Whenever a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification except as a district superintendent or specialist, the teacher shall be deemed to be reelected from year to year thereafter as a tenure teacher at the same salary and in the same or a comparable position of employment as that provided by the last executed contract with such teacher unless the trustees resolve by majority vote of their membership to terminate the services of the teacher in accordance with the provisions of 20-4-204.

History: En. 75-6103 by Sec. 84, Ch. 5, L. 1971; amd. Sec. 1, Ch. 49, L. 1971; R.C.M. 1947, 75-6103; amd. Sec. 16, Ch. 511, L. 1979; amd. Sec. 1, Ch. 521, L. 1983.

Cross-References
Tenure of teachers employed by cooperatives, 20-7-456.

20-4-204. Termination of tenure teacher services. (1) (a) The following persons may make a recommendation in writing to the trustees of the district for termination of the services of a tenure teacher:

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal;

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) The recommendation must state clearly and explicitly the specific reason or reasons leading to the recommendation for termination.

(2) Whenever the trustees of a district receive a recommendation for termination, the trustees shall, before May 1 of the current school fiscal year, notify the teacher of the recommendation for termination and of the teacher's right to a hearing on the recommendation. The notification must be delivered by certified letter or by personal notification for which a signed receipt is returned. The notification must include:

(a) the statement of the reason or reasons that led to the recommendation for termination; and

(b) a printed copy of this section for the teacher's information.

(3) The teacher may, in writing, waive the right to a hearing. Unless the teacher waives the right to a hearing, the trustees shall set a hearing date, giving consideration to the convenience of the teacher, not less than 10 days or more than 20 days from receipt of the notice of recommendation for termination.

(4) The trustees shall:

(a) conduct the hearing on the recommendation at a regularly scheduled or special meeting of the board of trustees and in accordance with 2-3-203; and

(b) resolve at the conclusion of the hearing to terminate the teacher or to reject the recommendation for termination.

(5) The tenure teacher may appeal a decision to terminate to the county superintendent who may appoint a qualified attorney at law as legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law.

(6) Subsequently, either the teacher or the trustees may appeal to the superintendent of public instruction under the provision for the appeal of controversies in this title.

History: En. 75-6104 by Sec. 85, Ch. 5, L. 1971; amd. Sec. 1, Ch. 157, L. 1974; amd. Sec. 2, Ch. 306, L. 1974; R.C.M. 1947, 75-6104; amd. Sec. 2, Ch. 521, L. 1983; amd. Sec. 1, Ch. 56, L. 1985; amd. Sec. 1, Ch. 510, L. 1987.

Compiler's Comments

1987 Amendment: In (2) changed "April 1" to "May 1".

Cross-References

Authority of Superintendent of Public Instruction to hear controversy appeals, 20-3-107.

Authority of County Superintendent to hear controversy appeals, 20-3-210.

Dismissal of teachers by cooperative, 20-7-456.

20-4-205. Notification of tenure teacher reelection — acceptance. (1) The trustees shall provide written notice by April 1 to all tenure teachers who have been reelected. Any tenure teacher who does not receive notice of reelection or termination shall be automatically reelected for the ensuing school fiscal year.

(2) Any tenure teacher who receives notification of his reelection for the ensuing school fiscal year shall provide the trustees with his written acceptance of the conditions of such reelection within 20 days after the receipt of

the notice of reelection, and failure to so notify the trustees within 20 days shall constitute conclusive evidence of his nonacceptance of the tendered position.

History: **En. 75-6105 by Sec. 86, Ch. 5, L. 1971; R.C.M. 1947, 75-6105.**

20-4-206. Notification of nontenure teacher reelection — acceptance — termination and statement of reason. (1) The trustees shall provide written notice by May 1 to all nontenure teachers who have been reelected. Any nontenure teacher who does not receive notice of reelection or termination shall be automatically reelected for the ensuing school fiscal year.

(2) Any nontenure teacher who receives notification of his reelection for the ensuing school fiscal year shall provide the trustees with his written acceptance of the conditions of such reelection within 20 days after the receipt of the notice of reelection. Failure to so notify the trustees within 20 days may be considered nonacceptance of the tendered position.

(3) When the trustees notify a nontenure teacher of termination, the teacher may within 10 days after receipt of such notice make written request of the trustees for a statement in writing of the reasons for termination of employment. Within 10 days after receipt of the request, the trustees shall furnish such statement to the teacher.

(4) The provisions of this section shall not apply to cases in which a nontenure teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed.

History: **En. Sec. 1, Ch. 324, L. 1973; amd. Sec. 1, Ch. 87, L. 1975; amd. Sec. 1, Ch. 142, L. 1975; R.C.M. 1947, 75-6105.1; amd. Sec. 2, Ch. 510, L. 1987.**

Compiler's Comments

1987 Amendment: In (1) changed "April 15" to "May 1".

20-4-207. Dismissal of teacher under contract. (1) The trustees of any district may dismiss a teacher before the expiration of his employment contract for immorality, unfitness, incompetence, or violation of the adopted policies of such trustees.

(2) (a) The following persons may recommend the dismissal of a teacher for cause under subsection (1):

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal; or

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) A person listed in subsection (2)(a) who recommends dismissal of a teacher shall give notice of the recommendation in writing to each trustee of the district and to the teacher.

(c) The notice must state the specific instances of behavior or acts that led to the recommendation for dismissal.

(3) (a) Whenever the trustees of any district receive a recommendation for dismissal, the trustees shall notify the teacher of his right to a hearing before the trustees either by certified letter or by personal notification for which a signed receipt must be returned. The teacher may in writing waive the right to a hearing. Unless the teacher waives the right to a hearing, the

teacher and trustees shall agree on a hearing date not less than 5 days or more than 20 days from the notice of intent to recommend dismissal.

(b) The trustees shall conduct a hearing on the recommendation and resolve at the conclusion of the hearing to dismiss the teacher or to reject the recommendation for dismissal.

(4) With the exception of a county superintendent, a person who recommends dismissal pursuant to subsection (2) may suspend the teacher from active performance of duty with pay pending the hearing date if the teacher's behavior or acts that led to the recommendation for dismissal are contrary to the welfare of the students or the effective operation of the school district.

(5) Any teacher who has been dismissed may in writing within 10 days appeal such dismissal to the county superintendent. Following such appeal a hearing shall be held within 10 days. If the county superintendent, after a hearing, determines that the dismissal by the trustees was made without good cause, he shall order the trustees to reinstate such teacher and to compensate such teacher at his contract amount for the time lost during the pending of the appeal.

History: **En. 75-6107 by Sec. 88, Ch. 5, L. 1971; amd. Sec. 1, Ch. 327, L. 1971; R.C.M. 1947, 75-6107; amd. Sec. 2, Ch. 56, L. 1985.**

Cross-References

Authority of Superintendent of Public Instruction to hear controversy appeals, 20-3-107.

Authority of County Superintendent to hear controversy appeals, 20-3-210.

Authority of trustees to employ and dismiss teachers, 20-3-324.

Dismissal of teachers by cooperative, 20-7-456.

20-4-208 through 20-4-210 reserved.

20-4-211. American Indian studies — definitions. (1) As used in 20-4-211 through 20-4-214, "American Indian studies" means instruction pertaining to the history, traditions, customs, values, beliefs, ethics, and contemporary affairs of American Indians, particularly Indian tribal groups in Montana.

(2) As used in 20-4-211 through 20-4-214, "instruction" means:

(a) a formal course of study offered by a unit of higher education developed with the advice and assistance of Indian people;

(b) in-service training developed by the superintendent of public instruction in cooperation with educators of Indian descent and made available to school districts; or

(c) in-service training provided by a local board of trustees, which is developed and conducted in cooperation with local Indian people.

History: **En. Sec. 2, Ch. 464, L. 1973; R.C.M. 1947, 75-6130.**

Cross-References

Pupil-instruction-related days for inservice training, 20-1-304.

20-4-212. Policy to recognize heritage of American Indians. It is the constitutionally declared policy of this state to recognize the distinct and unique cultural heritage of the American Indians and to be committed in its educational goals to the preservation of their cultural heritage. It is the intent of 20-4-211 through 20-4-214, predicated on the belief that school personnel should relate effectively with Indian students and parents, to provide means by which school personnel will gain an understanding of and appreciation for the American Indian people.

History: En. Sec. 1, Ch. 464, L. 1973; R.C.M. 1947, 75-6129.

Cross-References

Preservation of cultural integrity of Indians, Art. X, sec. 1, Mont. Const.

20-4-213. Qualification in Indian studies — trustees and noncertified personnel. (1) Any board of trustees for an elementary or secondary public school district on or for a public school located in the vicinity of an Indian reservation where the enrollment of Indian children qualifies the school for federal funds for Indian education programs may require that all of its certified personnel satisfy the requirements for instruction in American Indian studies as defined in 20-4-211. This requirement must be a local district requirement with enforcement and administration solely the responsibility of the local board of trustees.

(2) Members of boards of trustees and all noncertified personnel in public school districts on or in the vicinity of Indian reservations are encouraged to satisfy the requirements for instruction in American Indian studies as defined in 20-4-211.

History: En. Sec. 3, Ch. 464, L. 1973; R.C.M. 1947, 75-6131; amd. Sec. 1, Ch. 458, L. 1979.

20-4-214. Other schools encouraged to comply with requirements on Indian studies. Boards of trustees for all public school districts other than those defined in 20-4-213 and governing authorities for all nonpublic schools in Montana are encouraged to comply with the provisions and intent of 20-4-211 through 20-4-214.

History: En. Sec. 4, Ch. 464, L. 1973; R.C.M. 1947, 75-6132.

Part 3

Teachers' Powers, Duties, and Privileges

20-4-301. Duties of teacher — nonpayment for failure to comply. (1) Any teacher under contract with a district shall:

(a) conform to and enforce the laws, board of public education policies, and the policies of the trustees of the district;

(b) utilize the course of instruction prescribed by the trustees;

(c) keep, in a neat and businesslike manner, a teacher's register in the form and on the blanks prescribed by the superintendent of public instruction;

(d) immediately after the conclusion of each school instructional year and before July 10 prepare an annual report in the manner and on the forms prescribed by the superintendent of public instruction which shall include the pupil attendance and absence data from his teacher's register that is necessary to calculate ANB, and such report shall be submitted to:

(i) the district superintendent, if there be one;

(ii) the principal of the school, if there be one and there is no district superintendent; or

(iii) the county superintendent or all county superintendents when the teacher is reporting for a joint district, if there is no district superintendent or principal;

(e) exercise due diligence in the care of school grounds and buildings, furniture, equipment, books, and supplies; and

(f) provide moral and civic instruction by:

(i) endeavoring to impress the pupils with the principles of morality, truth, justice, and patriotism;

(ii) teaching the pupils to avoid idleness, profanity, and falsehood;

(iii) instructing the pupils in the principles of free government and training them to comprehend the rights, responsibilities, and dignity of American citizenship.

(2) The trustees shall be authorized to withhold the salary warrant of any teacher who does not comply with the provisions of subsections (1)(a) or (1)(b) above until such teacher does comply with such provisions.

(3) The trustees shall not pay any teacher his last month's salary until he has provided a complete and accurate annual report to the required person, as determined by such person and as required in subsection (1)(d) of this section.

History: En. 75-6108 by Sec. 89, Ch. 5, L. 1971; R.C.M. 1947, 75-6108.

Cross-References

ANB defined, 20-1-101.

Abused or neglected child — duty to report, 41-3-201.

20-4-302. Power of teacher or principal over pupils — undue punishment. (1) Any teacher or principal shall have the authority to hold any pupil to a strict accountability for any disorderly conduct in school, on the way to or from school, or during intermission or recess. Whenever a principal shall deem it necessary to inflict corporal punishment in order to maintain orderly conduct of a pupil, he shall administer such corporal punishment without undue anger and only in the presence of a witness. Before any corporal punishment is administered, the parent or guardian shall be notified of the principal's intention to so punish his child; except that in cases of open and flagrant defiance of the teacher, principal, or of the authority of the school, the teacher or principal may administer corporal punishment without giving such notice.

(2) Any teacher in a district not employing a district superintendent or a principal of the school where the teacher is assigned shall have the authority to suspend a pupil for good cause and to administer corporal punishment in the presence of a witness, without undue anger. Where either a district superintendent or a school principal is employed, only the superintendent or principal shall have the authority to suspend a pupil for good cause. Whenever a teacher suspends a pupil, he shall notify the trustees immediately of such action.

(3) It shall be the duty of any teacher to report the truancy or incorrigibility of any pupil to the district superintendent, principal, or the trustees, whichever is applicable.

(4) Any teacher or principal who shall maltreat or abuse any pupil by administering any undue or severe punishment shall be deemed guilty of a

misdemeanor and, upon conviction of such misdemeanor by a court of competent jurisdiction, shall be fined not more than $100.

History: En. 75-6109 by Sec. 90, Ch. 5, L. 1971; amd. Sec. 1, Ch. 388, L. 1977; R.C.M. 1947, 75-6109; amd. Sec. 1, Ch. 135, L. 1981.

Cross-References

Duties of pupils — sanctions, 20-5-201.

Suspension and expulsion of pupil, 20-5-202.

Confidential relationship between student and school personnel, 26-1-809.

Use of force by parent, guardian, or teacher, 45-3-107.

20-4-303. Abuse of teachers. Any parent, guardian, or other person who shall insult or abuse a teacher anywhere on the school grounds or school premises shall be deemed guilty of a misdemeanor and, upon conviction of such misdemeanor by a court of competent jurisdiction, shall be fined no less than $25 or more than $500.

History: En. 75-6110 by Sec. 91, Ch. 5, L. 1971; amd. Sec. 1, Ch. 100, L. 1971; R.C.M. 1947, 75-6110.

20-4-304. Attendance at state teachers' association annual session. When the trustees of a school district close the schools of the district for the annual session of the state teachers' association, a teacher may attend the annual session without loss of salary or work at his school and perform duties related to his position of employment, as may be prescribed by the trustees, without loss of salary. If a teacher does neither, he shall not be paid.

History: En. 75-6111 by Sec. 92, Ch. 5, L. 1971; amd. Sec. 1, Ch. 200, L. 1971; R.C.M. 1947, 75-6111.

Cross-References

Traveling expenses of officers attending meetings, 20-1-211.

Pupil-instruction-related days, 20-1-304.

Part 4

District Superintendent and Principal

20-4-401. Appointment and dismissal of district superintendent or county high school principal. (1) The trustees of any high school district, except a county high school, and the trustees of the elementary district where its high school building is located shall jointly employ and appoint a district superintendent. The trustees of a county high school shall employ and appoint a district superintendent, except that they may employ and appoint a holder of a class 3 teacher certificate with a district superintendent endorsement as the county high school principal in lieu of a district superintendent. The trustees of any other district may employ and appoint a district superintendent.

(2) Whenever a joint board of trustees has been formed by a county high school and the elementary district where the county high school is located, such joint board shall jointly employ and appoint a district superintendent. During the term of contract of the jointly appointed district superintendent, neither district shall separately employ and appoint a district superintendent or county high school principal.

(3) School districts other than those provided in subsection (2) that form a joint board of trustees may jointly employ and appoint a district superintendent as allowed in 20-3-361.

(4) The written contract of employment of a district superintendent or a county high school principal shall be authorized by the proper resolution of the trustees of the district or the joint board of trustees and executed in duplicate by the chairman of the trustees or joint board of trustees and the clerks of the districts in the name of the districts and by the district superintendent or the county high school principal. Such contract shall be for a term of not more than 3 years, and after the second successive contract, the contract shall be deemed to be renewed for a further term of 1 year from year to year thereafter unless the trustees shall, by resolution passed by a majority vote of its membership, resolve to terminate the services of the district superintendent or the county high school principal at the expiration of his existing contract. The trustees shall take such termination action and notify the district superintendent or the county high school principal in writing of their intent to terminate his services at the expiration of his current contract not later than February 1 of the last year of such contract.

(5) Whenever a joint board of trustees employs a person as the district superintendent under subsection (2) or (3), the districts shall prorate the compensation provided by the contract of employment on the basis of the number of teachers employed by each district.

(6) At any time the class 3 teacher certification or the endorsement of the certificate of a district superintendent or a county high school principal that qualifies such person to hold such position becomes invalid, the trustees of the district or the joint board of trustees shall discharge such person as the district superintendent or county high school principal regardless of the unexpired term of his contract. The trustees shall not compensate him under the terms of his contract for any services rendered subsequent to the date of the invalidation of his teacher certificate.

(7) No district superintendent or county high school principal shall engage in any work or activity which the trustees may deem to be in conflict with his duties and employment as the district superintendent or county high school principal.

History: En. 75-6112 by Sec. 93, Ch. 5, L. 1971; amd. Sec. 1, Ch. 105, L. 1973; R.C.M. 1947, 75-6112; amd. Sec. 4, Ch. 308, L. 1987.

Compiler's Comments

1987 Amendment: Inserted (3); in (5), after "superintendent", inserted "under subsection (2) or (3)" and substituted "districts" for "elementary district and the county high school".

Cross-References

Code of Ethics, Title 2, ch. 2, part 1.

Powers of joint board of trustees, 20-3-362.

20-4-402. Duties of district superintendent or county high school principal. The district superintendent or county high school principal shall be the executive officer of the trustees and, subject to the direction and control of the trustees, he shall:

(1) have general supervision of all schools of the district and the personnel employed by the district;

(2) implement and administer the policies of the trustees of the district;

(3) develop and recommend courses of instruction to the trustees for their consideration and approval in accordance with the provisions of 20-7-111;

(4) select all textbooks and submit such selections to the trustees for their approval in accordance with the provisions of 20-7-602;

(5) select all reference and library books and submit such selections to the trustees for their approval in accordance with provisions of 20-7-204;

(6) have general supervision of all pupils of the district, enforce the compulsory attendance provisions of this title, and have the authority to suspend for good cause any pupil of the district;

(7) report the cumulative pupil attendance and pupil absence of the district and any other pupil information required by the report form prescribed by the superintendent of public instruction to the county superintendent or county superintendents when reporting for a joint district, immediately after the conclusion of the school instructional year and before July 10; and

(8) perform any other duties in connection with the district as the trustees may prescribe.

History: En. 75-6113 by Sec. 94, Ch. 5, L. 1971; R.C.M. 1947, 75-6113; amd. Sec. 2, Ch. 135, L. 1981.

Cross-References

Powers and duties of trustees, 20-3-324.

Attendance, Title 20, ch. 5, part 1.

Suspension and expulsion, Title 20, ch. 5, part 2.

20-4-403. Powers and duties of principal. (1) Whenever the trustees of a district employ and appoint a school principal but do not employ and appoint a district superintendent, such principal shall perform the duties of a district superintendent as prescribed in subsections (4), (5), (6), (7), and (8) of 20-4-402 and shall have general supervision of such school and the personnel assigned to such school.

(2) If granted authority by the board of trustees, a school principal in a district that does employ and appoint a district superintendent may suspend for good cause any pupil of the school where the principal is employed.

History: En. 75-6114 by Sec. 95, Ch. 5, L. 1971; R.C.M. 1947, 75-6114; amd. Sec. 3, Ch. 135, L. 1981.

CHAPTER 5

PUPILS

Part 1 — Attendance

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Chapter Cross-References

Penalty for abuse of students, 20-4-302.

Fees for school supplies, 20-9-214.

Powers of trustees to require pupils to pay fees, 20-9-214.

Extracurricular fund for pupil functions, 20-9-504.

Confidential communications by students, 26-1-809.

Use of force by parent, guardian, or teacher, 45-3-107.

Part 1

Attendance

Part Cross-References

School terms and holidays, Title 20, ch. 1, part 3.

Duty of trustees to administer attendance laws, 20-3-324.

School enrollment procedures to aid identification of missing children, 44-2-511.

20-5-101. Admittance of child to school. (1) The trustees shall assign and admit any child to a school in the district when the child is:

(a) 6 years of age or older on or before September 10 of the year in which the child is to enroll but has not yet reached his 19th birthday;

(b) a resident of the district; and

(c) otherwise qualified under the provisions of this title to be admitted to such school.

(2) The trustees of any district shall have the authority to assign and admit any nonresident child to a school in the district under the tuition provisions of this title.

(3) The trustees may at their discretion assign and admit a child to a school in the district who is under 6 years of age or an adult who is 19 years

of age or older if there are exceptional circumstances that merit waiving the age provision of this section.

History: **En. 75-6302 by Sec. 115, Ch. 5, L. 1971; R.C.M. 1947, 75-6302; amd. Sec. 2, Ch. 334, L. 1979; amd. Sec. 2, Ch. 558, L. 1979; amd. Sec. 74, Ch. 575, L. 1981.**

Cross-References

Free public education required, Art. X, sec. 1, Mont. Const.

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

General rules for determining residence, 1-1-215.

School enrollment procedures to aid identification of missing children, 44-2-511.

Illegal discrimination, Title 49, ch. 2.

Governmental code of fair practices, Title 49, ch. 3.

20-5-102. Compulsory enrollment and excuses. (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to be instructed in the program prescribed by the board of public education pursuant to 20-7-111 until the later of the following dates:

(a) the child's 16th birthday;

(b) the date of completion of the work of the 8th grade.

(2) Such parent, guardian, or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when he establishes residence in the district unless the child is:

(a) enrolled in a school of another district or state under any of the tuition provisions of this title;

(b) provided with supervised correspondence study or supervised home study under the transportation provisions of this title;

(c) excused from enrollment in a school of the district when it is shown that his bodily or mental condition does not permit his attendance and the child cannot be instructed under the special education provisions of this title;

(d) excused from compulsory school attendance upon a determination by a district judge that such attendance is not in the best interest of the child;

(e) excused by the board of trustees upon a determination that such attendance by a child who has attained the age of 16 is not in the best interest of the child and the school; or

(f) enrolled in a nonpublic or home school that complies with the provisions of 20-5-109. For the purposes of this subsection (f), a home school is the instruction by a parent of his child, stepchild, or ward in his residence and a nonpublic school includes a parochial, church, religious, or private school.

(3) The excuse provided for in subsection (2)(c) of this section shall be issued by the district superintendent or the county superintendent when there is no district superintendent employed by the district. Whenever an excuse is denied by the applicable official, an appeal of such decision may be made to the district court of the county within 10 days after the decision upon giving a bond in the amount set by the court to pay all costs of the appeal. The decision of the district court shall be final.

History: **En. 75-6303 by Sec. 116, Ch. 5, L. 1971; amd. Sec. 1, Ch. 389, L. 1971; amd. Sec. 3, Ch. 91, L. 1973; amd. Sec. 2, Ch. 137, L. 1975; R.C.M. 1947, 75-6303; amd. Sec. 1, Ch. 504, L. 1979; amd. Sec. 1, Ch. 355, L. 1983.**

Cross-References

Supervised home and correspondence study, 20-7-117, 20-10-121, 20-10-125, 20-10-142.

Duty of parent or guardian to make application for admission of child to Montana School for the Deaf and Blind, 20-8-105.

20-5-103. Compulsory attendance and excuses. (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to attend the school in which he is enrolled for the school term and each school day therein prescribed by the trustees of the district until the later of the following dates:

(a) the child's 16th birthday;

(b) the date of completion of the work of the 8th grade.

(2) The provisions of subsection (1) do not apply in the following cases:

(a) The child has been excused under one of the conditions specified in 20-5-102.

(b) The child is absent because of illness, bereavement, or other reason prescribed by the policies of the trustees.

(c) The child has been suspended or expelled under the provisions of 20-5-202.

History: En. 75-6304 by Sec. 117, Ch. 5, L. 1971; amd. Sec. 8, Ch. 266, L. 1977; R.C.M. 1947, 75-6304; amd. Sec. 2, Ch. 504, L. 1979.

Cross-References

Notice to parents of children absent from school, 44-2-507.

20-5-104. Attendance officer. In order to enforce the compulsory attendance provisions of this title, each district shall have at least one person serving as an attendance officer according to the following requirements:

(1) districts of the first and second class shall employ and appoint one or more attendance officers;

(2) districts of the third class may employ and appoint an attendance officer or may appoint a constable or other peace officer as an attendance officer; or

(3) the county superintendent shall be the attendance officer in third-class districts that do not appoint an attendance officer.

History: En. 75-6305 by Sec. 118, Ch. 5, L. 1971; R.C.M. 1947, 75-6305.

Cross-References

Additional positions of County Superintendent, 20-3-206.

20-5-105. Attendance officer — powers and duties. The attendance officer of any district shall:

(1) be vested with police powers, the authority to serve warrants, and the authority to enter places of employment of children in order to enforce the compulsory attendance provisions of this title;

(2) take into custody any child subject to compulsory attendance who is not excused under the provisions of this title and conduct him to the school in which he is or should be enrolled;

(3) do whatever else is required to investigate and enforce the compulsory attendance provisions of this title and the pupil attendance policies of the trustees;

(4) institute proceedings against any parent, guardian, or other person violating the compulsory attendance provisions of this title;

(5) keep a record of his transactions for the inspection and information of the trustees and make reports in the manner and to whomever the trustees designate; and

(6) perform any other duties prescribed by the trustees to preserve the morals and secure good conduct of the pupils of the district.

History: En. 75-6306 by Sec. 119, Ch. 5, L. 1971; R.C.M. 1947, 75-6306.

Cross-References

Duties of District Superintendent or county high school principal to enforce attendance laws, 20-4-402.

20-5-106. Truancy. (1) Whenever the attendance officer discovers a child truant from school or a child subject to compulsory attendance who is not enrolled in a school providing the required instruction and has not been excused under the provisions of this title, he shall notify in writing the parent, guardian, or other person responsible for the care of the child that the continued truancy or nonenrollment of his child shall result in his prosecution under the provisions of this section. If the child is not enrolled and in attendance at a school or excused from school within 2 days after the receipt of the notice, the attendance officer shall file a complaint against such person in a court of competent jurisdiction.

(2) If convicted, such person shall be fined not less than $5 or more than $20. In the alternative, he may be required to give bond in the penal sum of $100, with sureties, conditioned upon his agreement to cause the enrollment of his child within 2 days thereafter in a school providing the courses of instruction required by this title and to cause the child to attend that school for the remainder of the current school term. If a person refuses to pay a fine and costs or to give a bond as ordered by the court, he shall be imprisoned in the county jail for a term of not less than 10 days or more than 30 days.

History: En. 75-6307 by Sec. 120, Ch. 5, L. 1971; R.C.M. 1947, 75-6307.

Cross-References

Duty of teachers to report truancy, 20-4-302.

20-5-107. Incapacitated and indigent child attendance. In lieu of the provisions of 20-5-106 and when an attendance officer is satisfied that a pupil or a child subject to compulsory attendance is not able to attend school because he does not have the physical capacity or he is absolutely required to work at home or elsewhere in order to support himself or his family, the attendance officer shall report the case to the authorities charged with the relief of the poor. It shall be the duty of such welfare authorities to offer such relief as will enable the child to attend school. If the parent, guardian, or other person who is responsible for the care of the child denies or neglects the assistance offered to enable the child to attend school, the child shall be committed to a state institution, at the discretion of the court.

History: En. 75-6308 by Sec. 121, Ch. 5, L. 1971; R.C.M. 1947, 75-6308.

20-5-108. Tribal agreement with district for Indian child compulsory attendance and other agreements. It shall be the duty of the trustees of any district where an Indian child resides to require the child to attend school in the same manner as any other child residing in the district, unless it is prohibited by the laws or treaties affecting the Indian tribe of which such child is a member or the Indian reservation on which such child resides. When such a prohibition exists, the trustees of any district shall have the authority to accept from the tribal council or other governing body of the Indian tribe or the Indian reservation authorization to enforce the compulsory attendance provisions of this title and compel the school attendance of the Indian children belonging to the tribe or residing on the reservation.

History: En. 75-6309 by Sec. 122, Ch. 5, L. 1971; R.C.M. 1947, 75-6309(part).

Cross-References

Cooperative agreements with Indian tribes, Title 18, ch. 11.

20-5-109. Nonpublic school requirements for compulsory enrollment exemption. To qualify its students for exemption from compulsory enrollment under 20-5-102, a nonpublic or home school shall:

(1) maintain records on pupil attendance and disease immunization and make such records available to the county superintendent of schools on request;

(2) provide at least 180 days of pupil instruction or the equivalent in accordance with 20-1-301 and 20-1-302;

(3) be housed in a building that complies with applicable local health and safety regulations;

(4) provide an organized course of study that includes instruction in the subjects required of public schools as a basic instructional program pursuant to 20-7-111; and

(5) in the case of home schools, notify the county superintendent of schools of the student's attendance at the school.

History: En. Sec. 2, Ch. 355, L. 1983.

Cross-References

Disease immunization, Title 20, ch. 5, part 4.

School enrollment procedures to aid identification of missing children, 44-2-511.

Building codes and standards, Title 50, ch. 60.

Part 2

Duties — Suspension and Expulsion

Part Cross-References

University students — qualifications and rights, Title 20, ch. 25, part 5.

20-5-201. Duties and sanctions. (1) Any pupil shall:

(a) comply with the policies of the trustees and the rules of the school which he attends;

(b) pursue the required course of instruction;

(c) submit to the authority of the teachers, principal, and district superintendent of the district; and

(d) be subject to the control and authority of the teachers, principal, and district superintendent while he is in school or on school premises, on his way to and from school, or during his intermission or recess.

(2) Any pupil who continually and willfully disobeys the provisions of this section, shows open defiance of the authority vested in school personnel by

this section, defaces or damages any school building, school grounds, furniture, equipment, book belonging to the district, or harms or threatens to harm another person or his property shall be liable for punishment, suspension, or expulsion under the provisions of this title. When a pupil defaces or damages school property, as defined above, his parent or guardian shall be liable for the cost of repair or replacement upon the complaint of the teacher, principal, superintendent, or any trustee and the proof of such damage.

(3) In addition to the sanctions prescribed in this section, the trustees of a high school district may deny a high school pupil the honor of participating in the graduation exercise or exclude a high school pupil from participating in school activities. Such action shall not be taken until the incident or infraction causing such consideration has been investigated and the trustees have determined that the high school pupil was involved in such incident or infraction.

History: En. 75-6310 by Sec. 123, Ch. 5, L. 1971; R.C.M. 1947, 75-6310.

Cross-References

Penalty for disturbance of school, 20-1-206.

Power of teacher or principal over pupils, 20-4-302, 20-4-402, 20-4-403.

Liability of parent for property damage by minor, 40-6-237, 40-6-238.

20-5-202. Suspension and expulsion. As provided in 20-4-302, 20-4-402, and 20-4-403, any pupil may be suspended by a teacher, superintendent, or principal. The trustees of the district shall adopt a policy defining the authority and procedure to be used by a teacher, superintendent, or principal in suspending a pupil and to define the circumstances and procedures by which the trustees may expel a pupil. Expulsion shall be a disciplinary action available only to the trustees.

History: En. 75-6311 by Sec. 124, Ch. 5, L. 1971; R.C.M. 1947, 75-6311; amd. Sec. 4, Ch. 135, L. 1981.

20-5-203. Secret organization prohibited. (1) It shall be unlawful for any pupil to participate in or be a member of any secret fraternity or other secret organization that is in any degree a school organization. It also shall be unlawful for any pupil or other person to solicit any pupil to join any such prohibited secret fraternity or other secret organization.

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than $5 or more than $25 for each violation.

History: En. 75-6312 by Sec. 125, Ch. 5, L. 1971; R.C.M. 1947, 75-6312.

Part 3

Attendance Outside School District

Part Cross-References

Rules for determining residence, 1-1-215.

Duty of trustees to provide transportation, 20-10-121.

20-5-301. Elementary tuition with mandatory approval. (1) Any child may be enrolled in and attend an elementary school outside of the elementary district in which he resides when such elementary school is located in:

(a) any other district of the county of his residence;

(b) a county adjoining his county of residence; or

(c) a district of another state that is adjacent to the county of his residence.

(2) When a parent or guardian of a child wishes to have his child attend a school under the provisions of this section, he shall apply to the county superintendent of the county of his residence before July 1 of the school fiscal year for which he seeks approval except in those cases when substantial changes in circumstances occurred subsequently to justify later application. The application shall be made on a tuition agreement form supplied by the county superintendent and shall be approved, before permission to enroll in and attend school outside of the district under the provisions of this section may be granted, by:

(a) the trustees of the elementary district in which the child resides;

(b) the trustees of the district where the child wishes to attend school; and

(c) the county superintendent of the child's residence.

(3) In considering the approval of a tuition application, the tuition approval agents prescribed in this section shall approve such application for a resident child when:

(a) the child resides less than 3 miles from the school which he wishes to attend and more than 3 miles from any school of his resident elementary district;

(b) the child resides more than 3 miles from any school of his resident elementary district and such district does not provide transportation under the provisions of this title;

(c) the child resides more than 3 miles from any school of his resident elementary district, the resident district does not provide transportation under the provisions of this title, and school bus transportation is furnished by the district operating the school which he wishes to attend;

(d) the child is a member of a family who must send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided the child resides more than 3 miles from an elementary school of the resident district or the parent must move to the elementary district where the high school is located in order to enroll the other child in high school;

(e) the child has been declared by a court of competent jurisdiction to be an abused, neglected, or dependent child, as defined in 41-3-102, or a delinquent youth, as defined in 41-5-103, and has been ordered to be placed in a licensed youth care facility which is approved by the department of family services and as a result of the order the child is required to attend elementary school outside of the district of his residence; for purposes of this subsection, the prescribed geographic relationship of the receiving district to the district of residence does not apply; or

(f) the child is required to attend elementary school outside the district of residence as the result of an order of a court of competent jurisdiction. For the purposes of this subsection (f), the following do not apply:

(i) the prescribed geographic relationship of the receiving district to the district of residence in this subsection (3); or

(ii) an order issued under Title 40, chapter 4, part 2.

(4) The trustees of the district where the school to be attended is located may disapprove a tuition agreement that satisfies any of the mandatory approval conditions specified in subsection (3) above when they find that, due to insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child. In the event of disapproval, the trustees shall so notify the parent in writing within 15 days of the first receipt of the application.

History: En. 75-6313 by Sec. 126, Ch. 5, L. 1971; amd. Sec. 9, Ch. 266, L. 1977; R.C.M. 1947, 75-6313; amd. Sec. 1, Ch. 655, L. 1985; amd. Sec. 67, Ch. 370, L. 1987; amd. Sec. 22, Ch. 609, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 370 at end of (3)(e) inserted "or" and made minor changes in punctuation.

Chapter 609 in (3)(e), after "licensed", substituted "youth care facility" for "child care institution" and substituted reference to Department of Family Services for reference to Department of Social and Rehabilitation Services.

Cross-References

Duty of County Superintendent to act on tuition application, 20-3-205.

Determination of residence, 20-10-105.

20-5-302. Elementary tuition with discretionary approval. In considering the approval of a tuition application that is not required to be approved under the provisions of 20-5-301, the tuition approval agents prescribed in 20-5-301 may approve such application when such approval agents, individually, determine that the tuition agreement should be approved because of:

(1) the distance and road conditions between the child's residence and any school of his resident district;

(2) the trading center of the child's parents;

(3) an opportunity to live with his relatives;

(4) dormitory facilities in the district to be attended;

(5) the living conditions of the child's family;

(6) the availability of transportation; or

(7) the type of educational program available in the school to be attended.

History: En. 75-6314 by Sec. 127, Ch. 5, L. 1971; R.C.M. 1947, 75-6314.

Cross-References

Duty of County Superintendent to act on tuition application, 20-3-205.

20-5-303. Individual tuition for elementary pupil. (1) No provision of this title shall be construed to deny a parent the right to send his child, at his own expense, to any elementary school of a district other than his resident district when the parent has agreed to pay the tuition acceptable to the trustees of the district where the school is located. The trustees of the district where the school is located may allow the attendance of a child under the provisions of this section at their discretion. When the attendance is approved, the trustees shall charge tuition at the same rate prescribed by 20-5-305 reduced by any amount which is uniformly waived by the trustees for all tuition payments. However, under this section, tuition as determined in 20-5-305 shall be reduced by the amount the parent of the child paid in district and county property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school.

(2) (a) For the purposes of this section, "parent" includes an individual shareholder of a domestic corporation as defined in 35-1-102 whose shares are 95% held by related family members to the sixth degree of consanguinity or by marriage to the sixth degree of affinity.

(b) The tax amount to be credited to reduce any tuition charge to a parent under this subsection is determined in the following manner:

(i) determine the percentage of the total shares of the corporation held by the shareholder parent or parents;

(ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation for the benefit and support of the district in which the child will attend school.

(c) The percentage of total shares as determined in subsection (2)(b)(i) is the percentage of taxes paid as determined in subsection (2)(b)(ii) that is to be credited to reduce the tuition charge.

History: En. 75-6320 by Sec. 133, Ch. 5, L. 1971; R.C.M. 1947, 75-6320; amd. Sec. 2, Ch. 249, L. 1981; amd. Sec. 1, Ch. 263, L. 1983; amd. Sec. 1, Ch. 611, L. 1985.

20-5-304. Distances, notification, and appeal for elementary tuition purposes. (1) In considering any approval of an application submitted under the provisions of 20-5-301 or 20-5-302, the approval agents shall determine mileage distances on the basis of the shortest practical route between the child's residence and the school building, and they shall determine the child's residence on the basis of the provisions of 1-1-215.

(2) The county superintendent shall notify the parent or guardian and the trustees of the districts involved in the tuition application of the tuition agreement approval or disapproval. If a tuition agreement is disapproved by any approval agent, the parent may appeal such disapproval to the county superintendent and, subsequently, to the superintendent of public instruction under the provisions for the appeal of controversies in this title. The approval of any tuition agreement by the approval agents or upon appeal shall authorize the child named in such agreement to enroll in and attend the school named in such agreement for the ensuing school fiscal year.

(3) The rate of tuition and the budgeting and payment procedure prescribed in 20-5-305 shall be applicable to any tuition application approved under the provisions of this section.

History: En. 75-6315 by Sec. 128, Ch. 5, L. 1971; R.C.M. 1947, 75-6315.

Cross-References

Controversy appeal to Superintendent of Public Instruction, 20-3-107.

Controversy appeal to County Superintendent, 20-3-210.

20-5-305. Elementary tuition rates. (1) Whenever a pupil of an elementary district has been granted approval to attend a school outside of the district in which he resides, under the provisions of 20-5-301 or 20-5-302, such district shall pay tuition to the elementary district where the pupil attends school. Except as provided in subsection (2), the basis of the rate of tuition shall be determined by the attended district. The rate of tuition shall be determined by:

(a) totaling the actual expenditures from the district general fund, the debt service fund, and, if the pupil is a resident of another county, the retirement fund;

(b) dividing the amount determined in subsection (1)(a) by the ANB of the district for the current fiscal year, as determined under the provisions of 20-9-311; and

(c) subtracting the total of the per-ANB amount allowed by 20-9-316 through 20-9-321 that represents the foundation program as prescribed by 20-9-303 plus the per-ANB amount determined by dividing the state financing of the district permissive levy by the ANB of the district, from the amount determined in subsection (1)(b).

(2) The tuition for a full-time elementary special education pupil must be determined under rules adopted by the superintendent of public instruction for the calculation of elementary tuition for full-time elementary special education pupils as designated in 20-9-311 for funding purposes.

History: En. 75-7201 by Sec. 340, Ch. 5, L. 1971; amd. Sec. 2, Ch. 251, L. 1974; R.C.M. 1947, 75-7201; amd. Sec. 1, Ch. 223, L. 1983; amd. Sec. 1, Ch. 279, L. 1987.

Compiler's Comments

1987 Amendment: In (1), at beginning of second sentence, inserted exception clause; inserted (2); and made minor changes in phraseology.

Cross-References

Residency requirements for financial responsibility for special education, 20-7-420.

20-5-306. End-of-term tuition report and notification of resident elementary district. (1) At the close of the school term of each school fiscal year and before July 15, the trustees of each elementary district shall report to the county superintendent:

(a) the names of the pupils attending the schools of the district under an approved tuition agreement with the district of residence of each pupil;

(b) the number of days of school attended by each pupil;

(c) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, may waive (any waiver of tuition shall be applied equally to all pupils); and

(d) the rate of the current school fiscal year tuition, as determined under the provisions of 20-5-305.

(2) When the county superintendent receives a tuition report from a district, he shall immediately send the reported information to the county superintendent of each county in which the reported pupils reside. In turn, every county superintendent shall notify each elementary district of his county of the tuition amounts owed to other elementary districts of the county or outside of the county. Such amounts shall be established from the tuition rate and other information reported by the district in which the pupil attended school. No tuition shall be due when a pupil attends less than 40 days of school in such district.

History: En. 75-7202 by Sec. 341, Ch. 5, L. 1971; amd. Sec. 3, Ch. 251, L. 1974; R.C.M. 1947, 75-7202.

20-5-307. Budgeting, levy requirement, and paying elementary tuition. (1) The tuition amount that has been established in 20-5-305 shall be paid during the ensuing school fiscal year. The trustees of the elementary district shall include such amount in the tuition fund of the preliminary budget. If the trustees should fail to include such amount or any portion of it in the preliminary budget, they shall adjust the budgeted amount in adopting the final budget to provide for the total tuition amount that is due during the ensuing school fiscal year. Such adjustment shall not be subject to the budget adjustment provisions of 20-9-132.

(2) The county superintendent shall report the net tuition fund levy requirement for each elementary district to the county commissioners on the second Monday of August, and a levy on the district shall be made by the county commissioners in accordance with 20-9-142. Such levy requirement shall be calculated by subtracting from the total expenditure amount authorized in the final tuition fund budget the sum of the cash balance in the tuition fund at the end of the immediately preceding school fiscal year plus any other anticipated moneys that may be realized in the tuition fund.

(3) The trustees shall pay by warrants drawn on the tuition fund the tuition amounts owed to each district included in the county superintendent's notification provided under the provisions of 20-5-305. At least one-half of the payments must be made in December, and the remaining payments must be made by June 15 of the fiscal year.

History: En. 75-7203 by Sec. 342, Ch. 5, L. 1971; amd. Sec. 15, Ch. 277, L. 1977; R.C.M. 1947, 75-7203; amd. Sec. 1, Ch. 207, L. 1987.

Compiler's Comments

1987 Amendment: In (3) substituted second sentence for former second sentence that read: "Such payments shall be made whenever there is a sufficient amount of cash available in the tuition fund but no later than the end of the school fiscal year for which the budget was adopted."

Cross-References

Computation of general fund net levy requirement by County Superintendent, 20-9-141.

20-5-308 through 20-5-310 reserved.

20-5-311. High school tuition. (1) Any child may be enrolled in and attend a high school outside of the high school district in which he resides when such high school is located in Montana or in a county of another state that is adjacent to the state of Montana. When a parent or guardian of a child wishes to have his child attend a school under the provisions of this section, he shall apply to the county superintendent of the county of his residence before July 1 of the school fiscal year for which he seeks approval except in those cases when substantial changes in circumstances occurred subsequently to justify later application. Such application shall be made on a tuition agreement form supplied by the county superintendent. The trustees of the district of residence, the trustees of the district in which the child wishes to attend school, and the county superintendent are the approval agents for tuition to another high school within the county. The county superintendent of the county of residence and the trustees of the district in which the child wishes to attend school are the approval agents for attendance outside the county.

(2) (a) (i) The approval agents shall approve a tuition application when a child lives closer to a high school of another district than any high school located within his resident district or when, due to road or geographic conditions, it is impractical to attend the high school nearest his residence.

(ii) However, the approval agents are not required to approve a tuition application for a student seeking to attend a high school outside the state of Montana or the resident district if the resident district provides transportation. This exception does not apply when:

(A) the child resides in a county different from the county wherein the school he wishes to attend is located; or

(B) the child has enrolled in a high school outside his resident district and has received an approved tuition agreement on or before April 30, 1985. For the purposes of this subsection (2)(a)(ii)(B), the child has the right to continue his high school education in the receiving high school outside his resident district on an approved tuition agreement, subject to the provisions of this section.

(b) The approval agents shall approve a tuition application when a child, as a result of a court order, is required to attend high school outside the district of residence:

(i) but within the state of Montana or another state that maintains a reciprocal tuition agreement under 20-5-314; or

(ii) in a state that does not have a reciprocal tuition agreement pursuant to 20-5-314. The amount of daily tuition may not be greater than the average daily cost per student in the district of residence. The amount of annual tuition may not be greater than the average annual cost per student in the district of residence. The county superintendent shall calculate the average annual and the average daily cost per student. For purposes of this subsection (b), the following do not apply:

(A) an order issued under Title 40, chapter 4, part 2;

(B) placement of a child pursuant to Title 20, chapter 7, part 4.

(c) In approving a tuition agreement under this provision, the approval agents may require the child to attend the high school closest to his residence. The approval agents may approve any other tuition application that satisfies the geographic requirements of this section.

(3) The trustees of the district where the child wishes to attend school shall approve or disapprove any tuition application submitted to them under the provisions of this section within 15 days after the receipt of the application.

(4) The county superintendent shall notify the parent or guardian and the trustees of the district where the child wishes to attend school of the tuition agreement approval or disapproval. If a tuition agreement is disapproved by one or more approval agents, the parent may appeal such disapproval to the county superintendent and, subsequently, to the superintendent of public instruction under the provision for the appeal of controversies in this title.

(5) The approval of any tuition agreement by all of the applicable approval agents or upon appeal shall authorize the child named in such agreement to enroll in and attend the school named in such agreement for the ensuing school fiscal year.

History: En. 75-6316 by Sec. 129, Ch. 5, L. 1971; amd. Sec. 1, Ch. 211, L. 1974; R.C.M. 1947, 75-6316; amd. Sec. 1, Ch. 401, L. 1979; amd. Sec. 1, Ch. 504, L. 1983; amd. Sec. 1, Ch. 652, L. 1985; amd. Sec. 2, Ch. 655, L. 1985; amd. Sec. 1, Ch. 394, L. 1987.

Compiler's Comments

1987 Amendment: In (2)(b), in introductory phrase after "child", inserted "as a result of a court order" and after "residence" deleted "as the result of an order of a court of competent jurisdiction"; inserted (2)(b)(i); inserted first four sentences of (2)(b)(ii); deleted former (2)(b)(i) that read: "(i) the prescribed geographic relationship of the receiving district to the district of residence in this subsection (2)"; inserted (2)(b)(ii)(B); and made minor changes in punctuation.

Cross-References

Controversy appeal to the Superintendent of Public Instruction, 20-3-107.

Controversy appeal to the County Superintendent, 20-3-210.

Determination of residence, 20-10-105.

20-5-312. Reporting, budgeting, and payment for high school tuition. (1) Except as provided in subsection (2), at the close of the school term of each school fiscal year, the trustees of each high school district shall determine the rate of tuition for the current school fiscal year by:

(a) totaling the actual expenditures from the district general fund, the debt service fund, and, if the pupil is a resident of another county, the retirement fund;

(b) dividing the amount determined in subsection (1)(a) above by the ANB of the district for the current fiscal year, as determined under the provisions of 20-9-311; and

(c) subtracting the total of the per-ANB amount allowed by 20-9-316 through 20-9-321 that represents the foundation program as prescribed by 20-9-303 plus the per-ANB amount determined by dividing the state financing of the district permissive levy by the ANB of the district, from the amount determined in subsection (1)(b) above.

(2) The tuition for a full-time high school special education pupil must be determined under rules adopted by the superintendent of public instruction for the calculation of tuition for full-time high school special education pupils as designated in 20-9-311 for funding purposes.

(3) Before July 15, the trustees shall report to the county superintendent of the county in which the district is located:

(a) the names, addresses, and resident districts of the pupils attending the schools of the district under an approved tuition agreement;

(b) the number of days of school attended by each pupil;

(c) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, shall have the authority to waive; and

(d) the rate of current school fiscal year tuition, as determined under the provisions of this section.

(4) When the county superintendent receives a tuition report from a district, he shall immediately send the reported information to the superintendent of each district in which the reported pupils reside.

(5) When the district superintendent receives a tuition report or reports for high school pupils residing in his district and attending an out-of-district high school under approved tuition agreements, he shall determine the total amount of tuition due such out-of-district high schools on the basis of the following per-pupil schedule: the rate of tuition, number of pupils attending under an approved tuition agreement, and other information provided by each high school district where resident district pupils have attended school.

(6) The total amount of the high school tuition, with consideration of any tuition waivers, for pupils attending a high school outside the county of residence shall be financed by the county basic special tax for high schools as provided in 20-9-334. In December, the county superintendent shall cause the payment by county warrant of at least one-half of the high school tuition obligations established under this section out of the first moneys realized from the county basic special tax for high schools. The remaining obligations must be paid by June 15 of the school fiscal year. The payments shall be made to the county treasurer of the county where each high school entitled to tuition is located. The county treasurer shall credit such tuition receipts to the general fund of the applicable high school district, and the tuition receipts shall be used in accordance with the provisions of 20-9-141.

(7) For pupils attending a high school outside their district of residence but within the county of residence, the total amount of the tuition, with consideration of any tuition waivers, must be paid during the ensuing school fiscal year. The trustees of the sending high school district shall include the tuition amount in the tuition fund of the preliminary and final budgets. This budgeted tuition amount is not subject to the budget adjustment provisions of 20-9-132. The county superintendent shall report the net tuition fund levy requirement for each high school district to the county commissioners on the second Monday of August, and a levy on the district shall be made by the county commissioners in accordance with 20-9-142. This levy requirement shall be calculated by subtracting from the total expenditure amount authorized in the final tuition fund budget the sum of the cash balance in the tuition fund at the end of the immediately preceding school fiscal year plus any other anticipated money that may be realized in the tuition fund. The trustees shall pay by warrants drawn on the tuition fund the tuition amounts owed to each district included in the county superintendent's notification. Payments shall be made whenever there is a sufficient amount of cash available in the tuition fund but no later than the end of the school fiscal year for which the budget is adopted. However, if the trustees of either the sending or receiving high school feel the transfer privilege provided by this subsection is being abused they may appeal to the county superintendent of schools who shall hold a hearing and either approve or disapprove the transfer.

History: En. 75-6317 by Sec. 130, Ch. 5, L. 1971; amd. Sec. 1, Ch. 251, L. 1974; R.C.M. 1947, 75-6317; amd. Sec. 2, Ch. 401, L. 1979; amd. Sec. 2, Ch. 504, L. 1983; amd. Sec. 1, Ch. 70, L. 1985; amd. Sec. 2, Ch. 279, L. 1987.

Compiler's Comments

1987 Amendment: At beginning of (1) inserted exception clause; and inserted (2).

Cross-References

Duty of County Superintendent to transmit tuition information, 20-3-205.

Responsibility of district of residence for tuition for special education students, 20-7-420.

Tuition for special education student attending school in another district, 20-7-421.

Computation of general fund net levy requirement by County Superintendent, 20-9-141.

Basic county tax and other revenues for county equalization of elementary district foundation program, 20-9-331.

Basic special levy and other revenues for county equalization of high school district foundation program, 20-9-333.

Apportionment of county equalization money by County Superintendent, 20-9-334.

20-5-313. Individual tuition for high school pupil. (1) Any child eligible to attend high school may attend school in the high school district in which he resides without payment of tuition.

(2) No provision of this title shall be construed to deny a parent the right to send his child, at his own expense, to any high school outside of his district of residence when the parent agrees to pay the tuition acceptable to the trustees of the high school district operating such high school. When the attendance is approved, the parent shall pay tuition at the rate fixed by the trustees. However, under this section, tuition as determined in 20-5-312 shall be reduced by the amount the parent of the child paid in district and county property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school.

(3) (a) For the purposes of this section, "parent" includes an individual shareholder of a domestic corporation as defined in 35-1-102 whose shares are 95% held by related family members to the sixth degree of consanguinity or by marriage to the sixth degree of affinity.

(b) The tax amount to be credited to reduce any tuition charge to a parent under this subsection is determined in the following manner:

(i) determine the percentage of the total shares of the corporation held by the shareholder parent or parents;

(ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation for the benefit and support of the district in which the child will attend school.

(c) The percentage of total shares as determined in subsection (3)(b)(i) is the percentage of taxes paid as determined in subsection (3)(b)(ii) that is to be credited to reduce the tuition charge.

History: En. 75-6321 by Sec. 134, Ch. 5, L. 1971; R.C.M. 1947, 75-6321; amd. Sec. 3, Ch. 401, L. 1979; amd. Sec. 1, Ch. 249, L. 1981; amd. Sec. 2, Ch. 263, L. 1983; amd. Sec. 2, Ch. 611, L. 1985.

Cross-References

Out-of-district pupil payments to be used in computing general fund levy, 20-9-141.

20-5-314. Reciprocal tuition agreement with adjoining state. (1) The superintendent of public instruction shall have the authority to execute a reciprocal tuition agreement with the superintendent of public instruction or a department of education of any state adjoining Montana to allow the eligible children of Montana to attend school in the adjoining state and to allow children of the adjoining state to attend school in Montana. In negotiating a reciprocal tuition agreement, the tuition rates prescribed by 20-5-305 and 20-5-312 shall be waived and the reciprocal tuition rate may be negotiated as a flat amount or an actual-cost-per-pupil amount. The superintendent of public instruction shall supply a copy of any reciprocal tuition agreement that is executed to the county superintendent of each county that may be affected by such agreement.

(2) Any tuition agreement approved under the provisions of 20-5-301, 20-5-302, or 20-5-311 for a child's attendance at a school outside of the state shall be completed in accordance with the applicable reciprocal tuition agreement.

History: En. 75-6318 by Sec. 131, Ch. 5, L. 1971; R.C.M. 1947, 75-6318.

20-5-315. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. 75-6319 by Sec. 132, Ch. 5, L. 1971; amd. Sec. 1, Ch. 109, L. 1971; R.C.M. 1947, 75-6319.

Part 4

Health

Part Cross-References

Duty of trustees to retain physician and nurse and to visit schools to examine conditions, 20-3-324.

Contributions by school boards to health boards authorized, 50-2-113.

20-5-401. Repealed. Sec. 13, Ch. 147, L. 1979.

History: En. 75-5933 by Sec. 62, Ch. 5, L. 1971; amd. Sec. 1, Ch. 69, L. 1973; amd. Sec. 1, Ch. 280, L. 1973; R.C.M. 1947, 75-5933(19).

20-5-402. Definitions. For the purposes of this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Governing authority" means the board of trustees of a school district or the administrator of a private school.

(3) "Immunization" means induction of a state of resistance to a disease through administration of an immunizing agent.

(4) "Local health officer or department" means a city, city-county, county, or district health officer or department.

(5) "School" means an institution for the teaching of individuals, the curriculum of which is comprised of the work of any combination of kindergarten through grade 12.

History: **En. Sec. 1, Ch. 147, L. 1979.**

20-5-403. Immunization required — grace period for transfers. (1) The governing authority of any school may not allow any person to commence attendance as a pupil unless the person:

(a) has been immunized against diphtheria, pertussis, tetanus, poliomyelitis, rubella, and measles (rubeola) in the manner and with immunizing agents approved by the department, except that pertussis vaccination is not required for a person 7 years of age or older;

(b) qualifies for conditional attendance;

(c) files for an exemption; or

(d) is a pupil transferring from another school district, in which case the provisions of subsection (2) apply.

(2) A person who transfers from one school district to another has 30 calendar days after commencement of attendance at the school to which he or she transfers to either complete immunization as specified in subsection (1)(a), commence immunization in the manner required by 20-5-404, or file for an exemption. If none of the foregoing actions is taken within 30 days, the transfer pupil is prohibited from further attendance until such action is taken.

History: **En. Sec. 2, Ch. 147, L. 1979; amd. Sec. 1, Ch. 509, L. 1981; amd. Sec. 1, Ch. 102, L. 1983.**

20-5-404. Conditional attendance. The governing authority of a school may allow the commencement of attendance in school by a person who has not been immunized against each disease listed in 20-5-403 if that person has received one or more doses of polio, measles (rubeola), rubella, diphtheria, pertussis, and tetanus vaccine, except that pertussis vaccine is not required for a person 7 years of age or older.

History: **En. Sec. 3, Ch. 147, L. 1979; amd. Sec. 2, Ch. 102, L. 1983.**

20-5-405. Personal, religious, or medical exemption. (1) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking to attend school, or the person seeking to attend school, if an adult, signs and files with the governing authority a written statement on a form prescribed by the department stating that immunization is contrary to the personal or religious beliefs of the signer, immunization of the person seeking to attend school may not be required prior to commencement of attendance in any school. The statement must be maintained as part of the person's immunization records.

(2) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking to attend school, or the person seeking to attend school, if an adult, files with the governing authority a written statement signed by a physician licensed to practice medicine in any jurisdiction of the United States or Canada stating that the physical condition of the person seeking to attend school or medical circumstances relating to him indicate that some or all of the required immunizations are not considered safe and indicating the specific nature and probable duration of the medical condition or circumstances which contraindicate immunization, he is exempt from the requirements of this part to the extent indicated by the physician's statement. The statement must be maintained as part of the person's immunization records.

(3) Whenever there is good cause to believe that a person for whom an exemption has been filed under this section has a disease or has been exposed to a disease listed in 20-5-403 or will as the result of school attendance be exposed to such disease, the person may be excluded from the school by the local health officer or the department until the excluding authority is satisfied that the person no longer risks contracting or transmitting that disease. The exclusion period may not exceed 30 calendar days.

History: En. Sec. 4, Ch. 147, L. 1979; amd. Sec. 3, Ch. 102, L. 1983.

20-5-406. Immunization record. The governing authority of each school shall require written evidence of each pupil's immunization against the diseases listed in 20-5-403 and shall record the immunization of each pupil as part of his permanent school record on a form prescribed by the department.

History: En. Sec. 5, Ch. 147, L. 1979.

Cross-References

Public records, Title 2, ch. 6.

20-5-407. Rulemaking. The department may adopt rules necessary to implement the provisions of this part.

History: En. Sec. 6, Ch. 147, L. 1979.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

20-5-408. Enforcement. (1) The governing authority of any school shall prohibit from further attendance any pupil allowed to attend conditionally who has failed to obtain the immunizations required by 20-5-403(1) within time periods established by the department until that pupil has been immunized as required by the department or unless that pupil has been exempted under 20-5-405.

(2) Each governing authority shall file a written report on the immunization status of all pupils under its jurisdiction with the department and the local health department at times and on forms prescribed by the department.

(3) The local and state health departments shall have access to all information relating to immunization of any pupil in any school.

History: En. Sec. 7, Ch. 147, L. 1979; amd. Sec. 4, Ch. 102, L. 1983.

20-5-409. Failure to immunize or claim exemption — injunction. (1) A parent, guardian, or adult having the responsibility for the care and custody of a minor required by law to attend school shall elect to do one of the following:

(a) present evidence to the school that the minor has been immunized against the diseases specified in 20-5-403;

(b) take action to fully immunize the minor against the diseases listed in 20-5-403, in the manner and with immunizing agents approved by the department;

(c) file for an exemption pursuant to 20-5-405.

(2) If, as a result of the parent, guardian, or responsible adult's failure to make the election referred to in subsection (1), the minor is excluded from school, the department or the local health department may seek an injunction requiring the parent, guardian, or responsible adult to elect and perform one of the alternatives listed in subsection (1).

(3) Injunction is the exclusive remedy for failure to take any of the actions referred to in subsection (1).

History: En. Sec. 8, Ch. 147, L. 1979.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

20-5-410. Civil penalty. (1) Any person who violates any provision of this part, any rule promulgated under this part, or any order made pursuant to this part, with the exception of 20-5-409 and any rule adopted or order issued pursuant to 20-5-409, is subject to a civil penalty not to exceed $500. The department or the local health department may institute and maintain any enforcement proceedings hereunder.

(2) Action under subsection (1) is not a bar to enforcement of this part or of rules or orders made under it by injunction or other appropriate civil remedies.

(3) An action for a civil remedy to enforce this part or rules or orders made under it may be brought in the district court of any county where a violation occurs or is threatened.

History: En. Sec. 9, Ch. 147, L. 1979.

CHAPTER 6

SCHOOL DISTRICTS

Part 1 — School Districts—General Provisions

20-6-101. Definition of elementary and high school districts.
20-6-102. Confirmation of existing district boundaries.
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Part 2 — Elementary School Districts

20-6-201. Elementary district classification.
20-6-202. Time limitation for boundary changes.
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20-6-205. Elementary district annexation.
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20-6-208. District consolidation of two or more counties to organize joint elementary district.

20-6-209. Elementary district abandonment.
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Part 3 — High School Districts

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20-6-303. Establishment of high school districts in a county.
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20-6-306. Repealed.
20-6-307. High school district abandonment.
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20-6-314. Time limitations for boundary changes.
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20-6-318. Consolidation or annexation election with assumption of bonded indebtedness.
20-6-319. Consolidation or annexation election without assumption of bonded indebtedness.
20-6-320. Transfer of territory from one high school district to another.
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Chapter Cross-References

County Commissioners' authority to divide county into school districts, 7-5-2103.

Interlocal cooperation commission, Title 7, ch. 11, part 2.

Part 1

School Districts — General Provisions

20-6-101. Definition of elementary and high school districts. (1) As used in this title, except as defined in 20-9-402 for bonding purposes or unless the context clearly indicates otherwise, the term "district" means the territory, regardless of county boundaries, organized under the provisions of this title to provide public educational services under the jurisdiction of the trustees prescribed by this title. High school districts may encompass all or parts of the territory of one or more elementary districts.

(2) An elementary district is a district organized for the purpose of providing public education for all grades up to and including grade 8 and for preschool programs and kindergartens. A high school district is a district organized for the purpose of providing those public educational services authorized by this title for all grades beyond grade 8, including postsecondary programs, except those programs administered by community college districts or the Montana university system.

(3) An elementary district shall be known as "District No. ...., ... County" and a high school district, except a high school district where a county high school is operated, shall be known as "High School District No. ...., ... County". Any district shall be a body corporate and, as such body corporate, may sue and be sued, contract and be contracted with, and acquire, hold, use, and dispose of real or personal property for school purposes, within the limitations prescribed by law. Unless the context clearly indicates otherwise, the trustees of elementary districts and high school districts shall have the same types of powers, duties, and responsibilities authorized and imposed by the laws of Montana.

(4) Unless the context clearly indicates otherwise, an elementary district operating a high school in a county that has not been divided into high school districts shall be considered a high school district under this title and the trustees of the elementary district shall be the trustees of the high school district. Such an elementary district operating a high school shall not have the bonding authority of a high school district. However, the elementary district may exercise its bonding authority, in the manner provided by law, for high school purposes.

(5) As used in this title, unless the context clearly indicates otherwise, a county high school shall be considered a high school district subject to the limitations prescribed by law for a county high school as a result of its being a part of the county government. The boundaries of the high school district for a county high school shall be:

(a) the high school district boundaries established by the county high school boundary commission; or

(b) if no such boundaries have been established, the county boundaries, except for any territory located in a joint high school district.

(6) Any county high school recognized as a high school district under the provisions of subsection (5)(b) above shall not have a bonding authority. Instead, the county shall exercise its bonding authority in the manner provided in 20-9-451.

History: En. 75-6501 by Sec. 160, Ch. 5, L. 1971; R.C.M. 1947, 75-6501.

Cross-References

Powers and duties of district trustees, 20-3-324.

School bonds, Title 20, ch. 9, part 4.

20-6-102. Confirmation of existing district boundaries. All districts established under the laws of the state of Montana or the territory of Montana and defined by the boundaries described in the records of each county on January 26, 1971, shall be recognized as the districts of the state on such date.

History: En. 75-6502 by Sec. 161, Ch. 5, L. 1971; R.C.M. 1947, 75-6502.

20-6-103. Permanent record of district boundaries. (1) The board of county commissioners shall maintain a permanent record which plainly and definitely describes the boundaries of each district within the county. The county superintendent shall keep a transcript of the record in his office and shall be responsible for keeping the record current.

(2) If the county superintendent determines that the boundaries of any elementary district or high school district are in conflict or are incorrectly

described, he shall change, harmonize, and describe them accurately, and he shall make a report of such boundary adjustments to the board of county commissioners. When the board of county commissioners approves a district boundary report submitted by the county superintendent, such boundaries shall be the legal boundaries and description of the district within the county. Whenever district boundaries are clarified under this section, the county superintendent shall supply the trustees of the district with the legal descriptions of the boundaries of their district.

History: En. 75-6504 by Sec. 163, Ch. 5, L. 1971; R.C.M. 1947, 75-6504.

Part 2

Elementary School Districts

20-6-201. Elementary district classification. (1) Each elementary district shall have a classification of:

(a) first class, if it has a population of 6,500 or more;

(b) second class, if it has a population of 1,000 or more but less than 6,500; or

(c) third class, if it has a population of less than 1,000.

(2) The population of an elementary district shall be determined by the county superintendent on the basis of the best available population information for the district.

(3) The county superintendent shall establish the classification of each elementary district in the county on the basis of the population determined for the district and the district classification criteria prescribed in this section. Whenever the population of an elementary district increases or decreases requiring an adjustment of the district classification according to the criteria prescribed in this section, the county superintendent shall declare such district's classification to be changed in accordance with the determined population, except that the classification of an elementary district shall not be changed more than once every 5 years.

(4) Whenever the county superintendent changes an elementary district's classification with the result that a larger number of trustees is required on the elementary board of trustees, the increased number of trustee positions shall be filled in the manner provided for filling trustee vacancies. Such positions shall be subject to election on the next regular school election day. If the county superintendent changes an elementary district's classification with the result that a lesser number of trustees is required, the next elementary trustee positions that become vacant under any circumstances shall not be filled until the number of elementary trustee positions has been reduced to the number required by law.

History: En. 75-6503 by Sec. 162, Ch. 5, L. 1971; amd. Sec. 1, Ch. 353, L. 1971; amd. Sec. 3, Ch. 137, L. 1973; R.C.M. 1947, 75-6503(part).

Cross-References

Election of trustees upon change of district classification, 20-3-302, 20-3-343.

Number of trustee positions in elementary districts, 20-3-341.

20-6-202. Time limitation for boundary changes. No elementary district shall be created nor shall any elementary district boundaries be changed between the first day of January and the second Monday of August of any calendar year except when:

(1) the entire territory of a district is annexed or attached to another district;

(2) the entire territory of the portion of a joint district located in one county is annexed or attached to another district; or

(3) two or more districts are consolidated in their entirety.

History: En. 75-6505 by Sec. 164, Ch. 5, L. 1971; amd. Sec. 25, Ch. 388, L. 1975; R.C.M. 1947, 75-6505.

20-6-203. District consolidation. Any two or more elementary districts in one county may consolidate to organize an elementary district. The consolidation shall be conducted under the following procedure:

(1) At the time the consolidation proposition is first considered, the districts involved shall jointly determine whether the consolidation shall be made with or without the mutual assumption of the bonded indebtedness of each district by all districts included in the consolidation proposition.

(2) A consolidation proposition may be introduced, individually, in each of the districts by either of the two following methods:

(a) the trustees may pass a resolution requesting the county superintendent to order an election to consider a consolidation proposition involving their district; or

(b) not less than 20% of the electors of an elementary district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent requesting an election to consider a consolidation proposition involving their resident district.

(3) When the county superintendent has received a resolution or a valid petition from each of the districts included in the consolidation proposition, he shall, within 10 days after the receipt of the last resolution or petition and as provided by 20-20-201, order the trustees of each elementary district included in the consolidation proposition to call a consolidation election.

(4) Each district, individually, shall call and conduct an election in the manner prescribed in this title for school elections. In addition:

(a) if the districts to be consolidated are to mutually assume the bonded indebtedness of each district involved in the consolidation, the consolidation election also shall follow the procedures prescribed in 20-6-206; or

(b) if the districts to be consolidated are not to mutually assume the bonded indebtedness of each district involved in the consolidation, the consolidation election also shall follow the procedures prescribed in 20-6-207.

(5) After the county superintendent has received the election certification under the provisions of 20-20-416 from the trustees of each district included in a consolidation proposition, he shall determine if the consolidation proposition has been approved in each district. If each district has approved the consolidation proposition, he shall, within 10 days after the receipt of the last election certificate, order the consolidation of such districts. If it be for consolidation with the mutual assumption of bonded indebtedness of each elementary district by all districts included in the consolidation order, such order shall specify that all the taxable real and personal property of the consolidated district shall assume the bonded indebtedness of each district. In addition, such order shall specify the number of the consolidated elementary

district and shall contain the county superintendent's appointment of the trustees for the consolidated district who shall serve until a successor is elected at the next succeeding regular school election and qualified. The superintendent shall send a copy of such order to the board of county commissioners and to the trustees of each district incorporated in the consolidation order.

(6) If any district included in the consolidation proposition disapproves the consolidation proposition, the consolidation of all districts shall fail, and the county superintendent shall notify each district of the disapproval of the consolidation proposition.

History: En. 75-6506 by Sec. 165, Ch. 5, L. 1971; R.C.M. 1947, 75-6506.

Cross-References

Mail ballot elections prohibited, 13-19-104.

Election of district trustees following consolidation, 20-3-302.

Voluntary consolidation and annexation incentive plan, 20-6-401 through 20-6-408.

Conditions under which school election called, 20-20-201.

20-6-204. Conditions for elementary district annexation. (1) An elementary district may be annexed to another elementary district located in the same county when:

(a) a third-class district where a high school is not located is annexed to a third-class district where a high school is located, a first-class district, or a second-class district;

(b) a third-class district where a high school is located is annexed to a first-class district or a second-class district; or

(c) a second-class district is annexed to a first-class district.

(2) The annexation of elementary districts shall be conducted under the provisions of 20-6-205.

History: En. 75-6507 by Sec. 166, Ch. 5, L. 1971; R.C.M. 1947, 75-6507.

20-6-205. Elementary district annexation. An elementary district may be annexed to another elementary district located in the same county when one of the conditions of 20-6-204 is met in accordance with the following procedure:

(1) At the time the annexation proposition is first considered, the districts involved shall jointly determine whether the annexation shall be made with or without the joint assumption of the bonded indebtedness of the annexing district by the district to be annexed and the annexing district.

(2) An annexation proposition may be introduced in the district to be annexed by either of the two following methods:

(a) the trustees may pass a resolution requesting the county superintendent to order an election to consider an annexation proposition for their district; or

(b) not less than 20% of the electors of the district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent requesting an election to consider an annexation proposition for their district.

(3) Before ordering an election on the proposition, the county superintendent shall first receive from the trustees of the annexing district a resolution giving him the authority to annex such district.

(4) When the county superintendent has received authorization from the annexing district, he shall, within 10 days after the receipt of the resolution

or a valid petition from the district to be annexed and as provided by 20-20-201, order the trustees of the district to be annexed to call an annexation election.

(5) The district shall call and conduct an election in the manner prescribed in this title for school elections. In addition:

(a) if the district to be annexed is to jointly assume with the annexing district the bonded indebtedness of the annexing district, the annexation election shall also follow the procedures prescribed in 20-6-206; or

(b) if the district to be annexed is not to jointly assume with the annexing district the bonded indebtedness of the annexing district, the annexation election shall also follow the procedures prescribed in 20-6-207.

(6) After the county superintendent has received the election certificate from the trustees of the district conducting the annexation election under the provisions of 20-20-416 and if the annexation proposition has been approved by such election, he shall order the annexation of the territory of the elementary district voting on such proposition to the elementary district that has authorized the annexation to its territory. Such order shall be issued within 10 days after the receipt of the election certificate and, if it be for annexation with the assumption of bonded indebtedness, shall specify that all the taxable real and personal property of the annexed territory shall jointly assume with the annexing district the existing bonded indebtedness of the annexing district. The county superintendent shall send a copy of the order to the board of county commissioners and to the trustees of the districts involved in the annexation order.

(7) If the annexation proposition is disapproved in the district to be annexed, it shall fail and the county superintendent shall notify each district of the disapproval of the annexation proposition.

History: En. 75-6508 by Sec. 167, Ch. 5, L. 1971; amd. Sec. 6, Ch. 91, L. 1973; R.C.M. 1947, 75-6508.

Cross-References

Mail ballot elections prohibited, 13-19-104.

Trustees of district affected by boundary change, 20-3-312.

Voluntary consolidation and annexation incentive plan, 20-6-401 through 20-6-408.

School elections, Title 20, ch. 20.

20-6-206. Consolidation or annexation election with assumption of bonded indebtedness. A consolidation election involving the mutual assumption of bonded indebtedness by the elementary districts to be consolidated, as prescribed in 20-6-203, or an annexation election involving the joint assumption of bonded indebtedness by the elementary district to be annexed, as prescribed in 20-6-205, shall comply with the following procedures in addition to those prescribed by this title for other school elections:

(1) In a consolidation election the ballots shall read, after stating the consolidation proposition, "FOR consolidation with assumption of bonded indebtedness" and "AGAINST consolidation with assumption of bonded indebtedness".

(2) In an annexation election the ballots shall read, after stating the annexation proposition, "FOR annexation with assumption of bonded indebtedness" and "AGAINST annexation with assumption of bonded indebtedness".

(3) Any elector qualified to vote under the provisions of 20-20-301 may vote.

(4) When the trustees in each elementary district conducting an election canvass the vote under the provisions of 20-20-415, they shall decide, according to the following procedure, if the proposition has been approved:

(a) determine if a sufficient number of the qualified electors of the district have voted to validate the election and have voted to approve the election proposition in the same manner required for bond elections by 20-9-428; and

(b) when the proposition is approved under subsection (4)(a), determine the number of votes "FOR" and "AGAINST" the proposition.

(5) The proposition shall be approved in the district if a majority of those voting approve the proposition. If the proposition is disapproved under either the provisions of subsection (4)(a) or (4)(b), the proposition shall be disapproved in the district.

History: En. 75-6509 by Sec. 168, Ch. 5, L. 1971; amd. Sec. 5, Ch. 83, L. 1971; amd. Sec. 1, Ch. 155, L. 1974; R.C.M. 1947, 75-6509.

Cross-References

Schools bonds, Title 20, ch. 9, part 4.

School elections, Title 20, ch. 20.

20-6-207. Consolidation or annexation election without assumption of bonded indebtedness. (1) A consolidation election without the assumption of bonded indebtedness by the elementary districts to be consolidated, as prescribed in 20-6-203, or an annexation election without the joint assumption of bonded indebtedness by the elementary district to be annexed, as prescribed in 20-6-205, shall be conducted in the manner prescribed by this title for school elections. Any elector qualified to vote under the provisions of 20-20-301 may vote at the election.

(2) In a consolidation election the ballots shall read, after stating the consolidation proposition, "FOR consolidation without assumption of bonded indebtedness" and "AGAINST consolidation without assumption of bonded indebtedness". The consolidation proposition shall be approved by a district if a majority of those voting in a district approve the proposition, otherwise it shall be disapproved.

(3) In an annexation election the ballots shall read, after stating the annexation proposition, "FOR annexation without assumption of bonded indebtedness" and "AGAINST annexation without assumption of bonded indebtedness". The annexation proposition shall be approved by a district if a majority of those voting approve the proposition, otherwise it shall be disapproved.

History: En. 75-6510 by Sec. 169, Ch. 5, L. 1971; R.C.M. 1947, 75-6510.

Cross-References

School elections, Title 20, ch. 20.

20-6-208. District consolidation of two or more counties to organize joint elementary district. Any two or more elementary districts located in more than one county and whose territory is contiguous may consolidate to organize a joint elementary district. When a joint district consolidation proposition is to be introduced and considered in two or more districts, the consolidation procedure for elementary district consolidation without the assumption of bonded indebtedness prescribed in 20-6-203 and 20-6-207 shall be used except that each district shall submit its resolution or petition and its election certificate to the county superintendent of its resident county, and the several county superintendents shall jointly perform the duties prescribed for the county superintendent in 20-6-203.

History: En. 75-6511 by Sec. 170, Ch. 5, L. 1971; R.C.M. 1947, 75-6511.

Cross-References

Voluntary consolidation and annexation incentive plan, 20-6-401 through 20-6-408.

Proration and calculation of foundation program for a joint district, 20-9-305.

20-6-209. Elementary district abandonment. (1) The county superintendent shall declare an elementary district to be abandoned and order the attachment of the territory of such district to a contiguous district of the county when:

(a) a school has not been operated by a district for at least 180 days under the provisions of 20-1-301 for each of 3 consecutive school fiscal years or a lesser number of days as approved by the county superintendent or the superintendent of public instruction under the provisions of 20-9-804; or

(b) there is an insufficient number of residents who are qualified electors of the district that can and will serve as the trustees and clerk of the district so that a legal board of trustees can be organized.

(2) The county superintendent shall notify the elementary district that has not operated a school for 2 consecutive years before the first day of the third year that the failure to operate a school for 180 days or a lesser number of days than approved by the county superintendent or the superintendent of public instruction as provided under the provisions of 20-9-804 during the ensuing school fiscal year shall constitute grounds for abandonment of such district at the conclusion of the succeeding school fiscal year. Failure by the county superintendent to provide such notification shall not constitute a waiver of the abandonment requirement prescribed in subsection (1)(a) above.

(3) Any abandonment under subsection (1)(a) shall become effective on July 1. Any abandonment of an elementary district under subsection (1)(b) shall become effective immediately on the date of the abandonment order.

History: En. 75-6512 by Sec. 171, Ch. 5, L. 1971; R.C.M. 1947, 75-6512; amd. Sec. 7, Ch. 288, L. 1979.

Cross-References

Trustees of district affected by boundary change, 20-3-312.

School isolation, 20-9-302.

Purpose and establishment of nonoperating fund, 20-9-505.

Budgeting and net levy requirement for nonoperating fund, 20-9-506.

20-6-210. Joint elementary district abandonment. (1) Any joint elementary district shall be abandoned for the reasons prescribed in 20-6-209 or when the taxable value of the taxable property of the portion of the joint district that is located within any one of the counties is of so little value that the continued inclusion of such portion in the joint district is not justified. The boards of trustees designated by 20-9-151 for school budgeting purposes shall be responsible for ordering the abandonment of the joint district and shall immediately send a copy of such order to the county superintendent of each county with territory in the joint district.

(2) After the issuance or receipt of the abandonment order, each county superintendent shall attach the territory within his county to a contiguous elementary district within his county; except when the district is abandoned because of the lack of taxable property in one county's territory of the district and a school is operated in another county's territory of the district which

territory has a taxable value of $75,000 or more, the county superintendent of the county where such territory is located shall not attach it to another district. Such territory shall continue to operate as an elementary district within the county.

(3) Any abandonment of a joint elementary district shall become effective on the date of the abandonment order except that district abandonments under the provisions of 20-6-209(1)(a) shall become effective on July 1.

History: En. 75-6513 by Sec. 172, Ch. 5, L. 1971; amd. Sec. 4, Ch. 277, L. 1977; R.C.M. 1947, 75-6513.

Cross-References

Trustees of district affected by boundary change, 20-3-312.

School isolation, 20-9-302.

20-6-211. Joint elementary district dissolution. (1) Any joint elementary district may be dissolved. A proposition to dissolve a joint elementary district shall be introduced by a petition signed by a majority of the electors, qualified under the provisions of 20-20-301, who reside in the territory of the joint district that is located within one county. Such petition shall be addressed and presented to the county superintendent of the county of residence of the petitioners.

(2) Whenever a county superintendent receives a valid petition for the dissolution of a joint elementary district, he shall immediately notify the county superintendents of all the other counties with territory located in the joint district. The county superintendents jointly shall, within 10 days after the receipt of the petition and as provided by 20-20-201, order the trustees of the joint district to call an election. The trustees shall call and conduct, at the same time, separate elections in each portion of the joint district that is located in a separate county. Such elections shall be called and conducted in the manner prescribed in this title for school elections and shall be considered as if each were an election in a separate district. An elector who may vote at a joint district dissolution election shall be qualified to vote under the provisions of 20-20-301. The election judges for each separate election in the joint district shall send the election certificate to the county superintendent of the county in which they serve.

(3) After the receipt of the election certificates, the county superintendents shall jointly determine the result of such election on the following basis:

(a) if a majority of all the joint district electors voting at each election conducted in the joint district are in favor of the dissolution of the joint district, the dissolution of the joint elementary district shall be approved;

(b) if two-thirds of the electors voting at one of the elections conducted in a county's portion of the joint district vote in favor of the joint district dissolution, the dissolution of that portion of such joint district may be approved if all the county superintendents involved in such dissolution proposition agree that such dissolution will not place an undue hardship on any other county's portion of the joint district and there is no good and sufficient reason why such dissolution should not be made; or

(c) if the conditions of either subsection (a) or (b) cannot be satisfied, the dissolution of the joint district shall be disapproved.

(4) The county superintendents shall jointly order the joint elementary district dissolution if the proposition is approved and, whether it has been

approved or disapproved, shall jointly notify the joint district of the result. The dissolution of a joint district shall become effective on the first day of the ensuing school fiscal year.

(5) When the dissolution of a joint elementary district has been approved and ordered under subsection (3)(a) above, the county superintendent of each county shall individually order the attachment of the territory of the dissolved joint elementary district within his county to a contiguous elementary district within his county except when a school is operated in such territory, in which case the territory shall operate as a separate elementary district of the county.

(6) When the dissolution of a joint elementary district has been approved and ordered under the provisions of subsection (3)(b) above, the county superintendent of the county where the dissolved portion of the joint elementary district is located shall attach such territory to a contiguous elementary district within his county.

(7) In the event a dissolution proposition is disapproved, no subsequent joint elementary district dissolution election shall be held within 3 years thereafter.

History: En. 75-6514 by Sec. 173, Ch. 5, L. 1971; R.C.M. 1947, 75-6514.

Cross-References

Mail ballot elections prohibited, 13-19-104.

Trustees of district affected by boundary change, 20-3-312.

School elections, Title 20, ch. 20.

20-6-212. Boundary change of licensed child care institution elementary district. The boundaries of any elementary district created under the provisions of Chapter 105, Laws of 1965, shall be changed by the acquisition of any land contiguous to the district by the licensed child care institution for which such district was created. The boundaries shall be changed to include the additional acquired land in the district.

History: En. 75-6515 by Sec. 174, Ch. 5, L. 1971; R.C.M. 1947, 75-6515.

20-6-213. Transfer of territory from one elementary district to another. (1) A majority of the electors of any elementary district who are qualified to vote under the provisions of 20-20-301 and who reside in territory which is a part of an elementary district may petition the county superintendent to transfer such territory to another elementary district when:

(a) such territory is contiguous to the district to which it is to be attached;

(b) such territory is not located within 3 miles, over the shortest practical route, of an operating school of the district from which it is to be detached;

(c) the transfer of such territory will not reduce the taxable value of the district to less than $100,000 unless the remaining territory of the district will contain not less than 50,000 acres of nontaxable Indian land; and

(d) the board of trustees of the school district that would receive the territory has approved the transfer.

(2) The petition shall be addressed to the county superintendent and shall:

(a) describe the territory that is requested to be transferred and to what district it is to be transferred;

(b) state the reasons why such transfer is requested; and

(c) state the number of elementary school-age children residing in such territory.

(3) On receipt of a valid petition for a territory transfer, the county superintendent shall:

(a) file such petition;

(b) set a hearing place, date, and time for consideration of the petition that is not more than 40 days after receipt of the petition; and

(c) give notice of the place, date, and time of the hearing. The notices shall be posted in the districts affected by the request in the manner prescribed in this title for school elections, with at least one such notice posted in the territory to be transferred.

(4) The county superintendent shall conduct the hearing as scheduled, and any resident or taxpayer of the affected districts shall be heard. If the county superintendent considers it advisable and in the best interests of the residents of such territory, he shall grant the petitioned request and order the change of district boundaries to coincide with the boundary description in the petition. Otherwise, he shall, by order, deny the request. Either of the orders shall be final 30 days after its date unless it is appealed to the board of county commissioners by a resident or taxpayer of either district affected by the territory transfer. The decision of the board of county commissioners, after a hearing on such matter and consideration of the material presented at the county superintendent's hearing, shall be final 30 days after its date unless a petition to submit the question to a vote of the people in the district from which the land is to be transferred, which has been signed by a majority of the electors of the district who reside in the territory to be transferred and who are qualified to vote in elections for that district under 20-20-301, is presented prior to that time. When a petition is submitted under this subsection, the question of whether the land shall be transferred to another district shall be put before the voters at the next regular school election in the affected district.

(5) Whenever a petition to transfer territory from one elementary district to another elementary district would create a joint elementary district or affect the boundary of an existing joint elementary district, the petition shall be presented to the county superintendent of the county where the territory is located. Such county superintendent shall notify any other county superintendents of counties with districts affected by such petition, and the duties prescribed in this section for the county superintendent and the board of county commissioners shall be performed jointly by such county officials.

History: En. 75-6516 by Sec. 175, Ch. 5, L. 1971; amd. Sec. 6, Ch. 83, L. 1971; amd. Sec. 1, Ch. 256, L. 1975; R.C.M. 1947, 75-6516; amd. Sec. 1, Ch. 287, L. 1979.

Cross-References

Trustees of district affected by boundary change, 20-3-312.

20-6-214. Boundary adjustments in elementary school districts. The trustees of an elementary school district may, by resolution, request a change in the boundaries between their district and an adjacent district. The resolution shall be addressed to the county superintendent of schools who, upon receiving such a resolution, shall proceed as set forth in 20-6-213.

History: En. Sec. 1, Ch. 29, L. 1974; R.C.M. 1947, 75-6516.1.

Cross-References

Trustees of district affected by boundary change, 20-3-312.

20-6-215. Review of boundaries by county superintendent. A county superintendent of schools shall, at least once every 3 years, review the existing elementary school district boundaries in the county. This review and any recommended boundary changes shall be presented by the superintendent at a hearing conducted under 20-6-213. If the superintendent orders a boundary change after the hearing, he shall forward copies of his review and the testimony at the hearing to the board of county commissioners and the state superintendent of public instruction.

History: En. Sec. 2, Ch. 29, L. 1974; R.C.M. 1947, 75-6516.2.

20-6-216. Limitations for creation of new elementary district. A new elementary district may be created out of the territory of an existing elementary district or districts if:

(1) the taxable value of the taxable property of the territory proposed to be included in such new district is $1 million or more, except that when 50,000 acres or more of such new district are nontaxable Indian land, this limitation shall not be applicable;

(2) the taxable value of the taxable property of each existing district from which territory would be detached will be $2 million or more after the territory is detached;

(3) the ANB in any of the existing districts is not reduced to less than 15;

(4) the territory to be included in the new district shall consist only of parcels of land that are contiguous; and

(5) there is a compelling need, such as a significant increase in school-age population of the territory to be included in the new district, the extreme isolation of such population, or an emergency situation.

History: En. 75-6517 by Sec. 176, Ch. 5, L. 1971; amd. Sec. 4, Ch. 137, L. 1973; amd. Sec. 2, Ch. 256, L. 1975; R.C.M. 1947, 75-6517; amd. Sec. 1, Ch. 337, L. 1981; amd. Sec. 1, Ch. 430, L. 1981; amd. Sec. 1, Ch. 371, L. 1987.

Compiler's Comments

1987 Amendment: In (1) increased "$150,000" to "$1 million"; in (2) increased "$300,000" to "$2 million"; inserted (5); and made minor changes in phraseology.

20-6-217. Procedure for creation of new elementary district. (1) The petition requesting the creation of a new elementary district out of the territory of an elementary district or districts shall be addressed to the county superintendent and shall:

(a) describe the territory that is requested to be incorporated in the new district and the taxable value of such territory as shown by the last completed assessment roll;

(b) state the reasons why the creation of a new district is requested, in accordance with the provisions of 20-6-216(5); and

(c) be signed by the parents or guardians of not less than 10 children between the ages of 6 and 16 years who reside in the territory that would be included in the new district and who reside more than 3 miles over the shortest practical route from an operating school.

(2) When a county superintendent receives a valid petition requesting the creation of a new district, he shall:

(a) file such petition;

(b) set a hearing place, date, and time for consideration of such petition that is not more than 40 days after the receipt of the petition; and

(c) give notice of the place, date, and time of the hearing. The notices shall be posted in the districts affected by the request in the manner prescribed in this title for school elections, with at least one such notice posted in the territory to be included in the new district.

(3) The county superintendent shall conduct the hearing as scheduled unless before or at the time of the hearing he receives a protest petition signed by a majority of the electors of the proposed new district who are qualified to vote under the provisions of 20-20-301. A valid protest petition shall conclusively deny the creation of a new district. If a hearing is conducted, any resident or taxpayer of the affected districts shall be heard. If the county superintendent considers it advisable and in the best interests of the residents of the proposed new district and the residents of the remaining district, he shall grant the petitioned request and order the creation of a new elementary district with its boundaries coinciding with the boundaries defined in the petition. Otherwise, he shall, by order, deny the request. In the order creating the new district, the county superintendent shall establish the effective date for its creation and the procedures for effecting an orderly transition.

(4) Either of the county superintendent's orders may be appealed to the board of county commissioners within 30 days after the date of such order. Such appeal shall be in writing, signed by not less than three resident taxpayers, and shall state sufficient facts to show the appellants' right to appeal the order. The board of county commissioners shall call a hearing of such appeal for the first regular meeting of the commission that will allow notice of the hearing to be given in accordance with the requirements for notice of school elections. After considering the material presented at the county superintendent's hearing and such other material as is presented at its hearing, the board of county commissioners shall render a decision on the creation of such new elementary district. Such decision shall be final.

(5) When a new elementary district is created, the county superintendent shall appoint the trustees of the new district, giving preference in his selections to any trustees who were trustees of an old district and who reside in the new district. Any trustee position vacancies that may occur in the other districts shall be filled in the manner provided for filling trustee position vacancies for such district. Any trustee appointed under the provisions of this section shall serve until a successor is elected at the next regular school election and qualified.

(6) The order of the county superintendent or, if his order is appealed, the decision of the board of county commissioners creating a new district under this section shall be null and void, and the new district shall cease to exist, if such district does not open and operate a school within 2 years after the date of such order or decision. If the new district does not satisfy this requirement, the territory shall be reincorporated in the district or districts in which it was located before the creation of such new district and the trustees shall thereafter be without capacity to act.

(7) If a petition has been filed under the provisions of this section and denied by the county superintendent, no new petition may be filed until 1 year after the final decision on the original petition.

History: En. 75-6518 by Sec. 177, Ch. 5, L. 1971; R.C.M. 1947, 75-6518; amd. Sec. 2, Ch. 430, L. 1981; amd. Sec. 2, Ch. 371, L. 1987.

Compiler's Comments

1987 Amendment: In (1)(b), after "requested", inserted "in accordance with the provisions of 20-6-216(5)".

Cross-References

Legislative intent to elect less than majority of trustees, 20-3-302.

Filling vacant trustee position — appointee qualification and term of office, 20-3-309.

Establishment and purpose of trustee nominating districts, 20-3-353.

Redetermination of additional trustee positions and subsequent adjustments, 20-3-354.

Part 3

High School Districts

20-6-301. High school district classification. The classification of a high school district shall be the same as the classification of the elementary district (20-6-201) where the high school building is located. Whenever the classification of such elementary district is changed, the classification of a high school district shall be changed accordingly and the county superintendent shall adjust the number of additional high school district trustee positions in accordance with the method prescribed in 20-3-354 for the determination of the number of additional trustee positions required for a high school district. An increased number of trustee positions shall be filled by the appointment of the county superintendent, and such positions shall be subject to election at the next regular trustee election. When the number of positions is decreased, the next additional high school trustee positions that become vacant under any circumstances shall not be filled until the number of trustee positions has been reduced to the number required by law.

History: En. 75-6503 by Sec. 162, Ch. 5, L. 1971; amd. Sec. 1, Ch. 353, L. 1971; amd. Sec. 3, Ch. 137, L. 1973; R.C.M. 1947, 75-6503(part).

Cross-References

Legislative intent to elect less than majority of trustees, 20-3-302.

Number of trustee positions in elementary districts, 20-3-341.

Request and determination of number of additional high school district trustee positions, 20-3-352.

20-6-302. Repealed. Sec. 13, Ch. 617, L. 1983.

History: En. 75-6519 by Sec. 178, Ch. 5, L. 1971; R.C.M. 1947, 75-6519.

20-6-303. Establishment of high school districts in a county. The trustees of a high school district located in a county which has not been divided into high school districts or become a high school district by county high school unification may request the division of the county into a high school district or districts. The request shall be sent to the county superintendent.

History: En. 75-6520 by Sec. 179, Ch. 5, L. 1971; amd. Sec. 1, Ch. 44, L. 1971; R.C.M. 1947, 75-6520.

Cross-References

County bonding for county high school not placed in high school district, 20-9-451.

20-6-304. High school boundary commission — procedure for division of county into high school districts. (1) Each county of the state of Montana shall have a high school boundary commission consisting of the board of county commissioners and the county superintendent. Whenever a county superintendent receives a resolution from the trustees of any high school district requesting the commission to divide the county into high school districts, he shall immediately notify the high school boundary commission. Such commission shall set a time, date, and place for a public hearing on the request. The hearing shall be set for a date within 60 days after the receipt of the request, and any interested person may appear and be heard on such request. The county superintendent shall send a written notice of the public hearing on a requested division to the trustees of each elementary district of the county which has territory that would be affected by the change. The county superintendent shall also give notice of such public hearing in accordance with the requirement for school election notices prescribed by school election provisions of this title. The certificate of the county superintendent filed with the high school boundary commission reciting that such notice requirements have been satisfied shall be conclusive.

(2) In considering a request to divide the county into high school districts, the high school boundary commission shall give primary consideration to the convenience of the high school pupils of the territory under consideration. Such commission also shall consider the grouping of elementary districts to be encompassed by a high school district or districts and shall group contiguous elementary districts within a high school district unless obstacles of travel, such as mountains, rivers, impractical routes of travel, or distance, make such grouping impractical. After the hearing, the high school boundary commission shall order the division of the county into high school districts whenever requested under the provisions of 20-6-303. The commission's discretion shall extend only to the establishing of boundaries for the newly created high school district or districts.

History: En. 75-6521 by Sec. 180, Ch. 5, L. 1971; R.C.M. 1947, 75-6521; amd. Sec. 9, Ch. 617, L. 1983.

Cross-References

Voluntary consolidation and annexation incentive plan, 20-6-401 through 20-6-408.

Election notice, 20-20-204.

20-6-305. Repealed. Sec. 13, Ch. 617, L. 1983.

History: En. 75-6522 by Sec. 181, Ch. 5, L. 1971; R.C.M. 1947, 75-6522.

20-6-306. Repealed. Sec. 13, Ch. 617, L. 1983.

History: En. 75-6523 by Sec. 182, Ch. 5, L. 1971; amd. Sec. 12, Ch. 266, L. 1977; R.C.M. 1947, 75-6523.

20-6-307. High school district abandonment. Within 6 months after a high school district fails to operate an accredited high school within its boundaries for a period of 1 year, the county superintendent shall order the high school district abandoned. At least 20 days before issuing an abandonment order, the county superintendent shall notify the trustees of the high school district of the impending abandonment. When the order is issued, the county superintendent shall also order the attachment of the territory of each elementary district of the abandoned high school district to another high school district or districts of the county.

History: En. 75-6524 by Sec. 183, Ch. 5, L. 1971; R.C.M. 1947, 75-6524.

Cross-References

School fiscal year, 20-1-301.

School isolation, 20-9-302.

Purpose and establishment of nonoperating fund, 20-9-505.

Budgeting and net levy requirement for nonoperating fund, 20-9-506.

20-6-308. Limitations for organization of joint high school district. The boundaries of any high school district which encompass a county's portion of a joint elementary district where an elementary school is operated may be changed to establish a joint high school district. Such high school district boundary change shall be a transfer of all the territory located in another county's portion of the same joint elementary district. No such boundary change shall be made when:

(1) the territory transfer would reduce the taxable value of the taxable property of another high school district to less than $1 million; or

(2) a portion of the territory to be transferred is less than 3 miles from an operating accredited high school located in another high school district.

History: En. 75-6525 by Sec. 184, Ch. 5, L. 1971; amd. Sec. 3, Ch. 256, L. 1975; R.C.M. 1947, 75-6525.

20-6-309. Procedure for organization of joint high school district. The high school district boundary changes permitted under 20-6-308 shall be made according to the following procedure:

(1) A majority of the electors of a joint elementary district who are qualified to vote under the provisions of 20-20-301 and who reside in a county where the elementary school is not located may petition the county superintendent of their resident county to transfer the territory of the joint elementary district where they reside to establish a joint high school district. Such petition also shall state the reasons for requesting such a boundary change and the number of high school pupils residing in the territory.

(2) When the county superintendent receives a valid petition requesting the establishment of a joint high school district, he shall set a time, date, and place for a public hearing on the request which is not more than 40 days after the receipt of the petition. He shall give notice of such hearing in accordance with the election requirements for school election notices prescribed by school election provisions of this title. The county superintendent shall also notify the county superintendent of the county where the high school is located and the trustees of the high school district.

(3) The county superintendent shall hear the request to change the high school district boundaries at the place, time, and date set for the hearing, and any interested person may appear and be heard on the request. If the county superintendent deems it advisable and in the best interests of the residents of the territory to be transferred, he shall grant the petitioned request and order the change of high school boundaries to establish a joint high school district. Otherwise, he shall, by order, deny the request.

(4) If the county superintendent orders the establishment of a joint high school district, he shall immediately send the order to the county superintendent of the county where the high school is located. If the county superintendent of such county approves the order, he shall send such order to the

trustees of the high school district. If the trustees approve the order, the boundary change shall become effective. Without the approval of such county superintendent and trustees, the boundary change shall fail.

(5) At any time within 30 days after the date of the county superintendent's order to grant or deny the request to establish a joint high school district, an appeal may be made to the board of county commissioners of the county in which the petition originated. The board of county commissioners shall conduct a hearing for the appeal, and their decision shall be final, subject to the approvals required by subsection (4).

History: En. 75-6526 by Sec. 185, Ch. 5, L. 1971; R.C.M. 1947, 75-6526.

Cross-References

Rules for determining residence, 1-1-215.

Proration and calculation of foundation program for a joint district, 20-9-305.

Election notice, 20-20-204.

20-6-310. Repealed. Sec. 13, Ch. 617, L. 1983.

History: En. 75-6527 by Sec. 186, Ch. 5, L. 1971; R.C.M. 1947, 75-6527.

20-6-311. High school district boundary approval by superintendent. Whenever a high school boundary commission orders a division of the county into high school districts under 20-6-304, its order shall not be final until it has been approved by the superintendent of public instruction. The superintendent of public instruction shall not approve any high school boundary commission order that:

(1) is dated less than 1 year since the last high school boundary commission order was approved for such county; or

(2) has not been confirmed by the high school boundary commission of each county affected by the boundary change when it involves a joint high school district.

History: En. 75-6528 by Sec. 187, Ch. 5, L. 1971; R.C.M. 1947, 75-6528; amd. Sec. 10, Ch. 617, L. 1983.

20-6-312. County high school unification. (1) Any county high school may be unified with the elementary district where the county high school building is located to establish a unified school system under a unified board of trustees. If the county has not been divided into high school districts, a high school district with boundaries coterminous with the county boundaries shall be created, except that such high school district shall not include the territory of any existing joint high school district located in the county. The territory of an existing joint high school district shall remain a part of such joint high school district. The creation of high school districts under this provision shall be in lieu of the high school district division provisions of 20-6-303.

(2) A proposition to unify a county high school with the elementary district where the county high school building is located shall be introduced whenever:

(a) the trustees of the county high school and the trustees of the elementary district individually pass resolutions requesting the county superintendent to order an election to consider a unification proposition; or

(b) not less than 20% of the electors of the county or, if the county has been divided into high school districts, the electors of the high school district where the county high school is located, and who are qualified to vote under the provisions of 20-20-301, petition the county superintendent to order an election to consider a unification proposition.

(3) When the county superintendent has received the trustees' resolutions or a valid petition, he shall, within 10 days after the receipt of the last resolution or petition and under the provisions of 20-20-201, order the county high school to call an election to consider a unification proposition. The trustees of the county high school shall call and conduct an election in the manner prescribed in this title for school elections. An elector who may vote on the unification proposition shall be qualified to vote under the provisions of 20-20-301. The ballot for a county high school unification proposition shall be substantially in the following form:

"OFFICIAL BALLOT
COUNTY HIGH SCHOOL UNIFICATION
ELECTION

Shall .... County High School be unified with District No. ...., ... County to establish a unified school system under a unified board of trustees?

☐ FOR the unification of the county high school.
☐ AGAINST the unification of the county high school."

(4) When the county superintendent receives the election certificate from the trustees of the county high school, he shall issue an order declaring the unification of the county high school with the elementary district identified on the ballot as of the next succeeding July 1, if a majority of those electors voting at such election have voted for the unification proposition.

(5) If a majority of those electors voting at the election have voted against the unification proposition, he shall order the disapproval of the unification proposition.

History: **En. 75-6538 by Sec. 197, Ch. 5, L. 1971; R.C.M. 1947, 75-6538.**

Cross-References

Mail ballot elections prohibited, 13-19-104.

School elections, Title 20, ch. 20.

20-6-313. Transactions after approved county high school unification. (1) Whenever a county high school is unified with the elementary district where the county high school building is located, the following transactions shall be completed on or before the July 1 when the unification becomes effective:

(a) The high school boundary commission, without the approval of the superintendent of public instruction, shall order the creation of a high school district if the county has not already been divided into high school districts.

(b) The county high school trustees, who shall not have the capacity to govern the high school district upon unification, shall surrender all minutes, documents, and other records of the county high school to the trustees of the high school district.

(c) The county superintendent shall order the establishment of additional high school trustee nominating areas in the manner prescribed in 20-3-352 and 20-3-353, if requested to do so by a majority of the outlying elementary districts located in the high school district. When the county superintendent establishes such areas, he shall appoint additional high school district trustees from each area who shall hold office until a successor is elected at the next regular school election and qualified.

(d) The county treasurer, after allowing for any outstanding or registered warrants, shall transfer all end-of-the-year fund cash balances of the county high school to similar funds established for the high school district. All previous years' taxes levied and collected for the county high school shall be credited to the appropriate fund of the high school district.

(e) The board of county commissioners shall execute, in the name of the county, all necessary and appropriate deeds, bills of sale, and other instruments for the conveyance of title to all real and personal property of the county high school, including all appurtenances and hereditaments, to the high school district.

(2) All county high school bonds outstanding at the time of unification shall remain the obligation of the county or that portion of the county against which the bonds were originally issued. The high school district shall be responsible for the maintenance of the debt service fund for such bonds. It shall be the duty of the board of county commissioners and the trustees of the high school district to perform the duties prescribed in the school budgeting and bond redemption provisions of this title for the redemption and interest payments of the county high school bonds in the same manner and by the same means as though the county high school had not been unified.

History: **En. 75-6539 by Sec. 198, Ch. 5, L. 1971; R.C.M. 1947, 75-6539.**

Cross-References

Trustees of district affected by boundary change, 20-3-312.

Payment of county bonds, 20-9-455.

20-6-314. Time limitations for boundary changes. No high school district may be created and no high school district boundary may be changed between the first day of March and the second Monday of August of any calendar year except when:

(1) the entire territory of a high school district is annexed or attached to another high school district;

(2) the entire territory or portion of a joint high school district located in one county is annexed or attached to another high school district; or

(3) two or more districts are consolidated in their entirety.

History: **En. Sec. 1, Ch. 617, L. 1983.**

20-6-315. District consolidation. Any two or more high school districts in one county may consolidate to organize a high school district. The consolidation must be conducted under the following procedure:

(1) At the time the consolidation proposition is first considered, the districts involved shall jointly determine whether the consolidation is to be made with or without the mutual assumption of the bonded indebtedness of each district by all districts included in the consolidation proposition.

(2) A consolidation proposition may be introduced, individually, in each of the districts by either of the following methods:

(a) the trustees may pass a resolution requesting the county superintendent to order an election to consider a consolidation proposition involving their district; or

(b) not less than 20% of the electors of a high school district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent requesting an election to consider a consolidation proposition involving their district.

(3) When the county superintendent receives a resolution or a valid petition from each of the districts included in the consolidation proposition, he shall, within 10 days after the receipt of the last resolution or petition and as provided by 20-20-201, order the trustees of each high school district included in the consolidation proposition to call a consolidation election.

(4) (a) Each district, individually, shall call and conduct an election in the manner prescribed in this title for school elections.

(b) In addition:

(i) if the districts to be consolidated are to mutually assume the bonded indebtedness of each district involved in the consolidation, the consolidation election must also follow the procedures prescribed in 20-6-318; or

(ii) if the districts to be consolidated are not to mutually assume the bonded indebtedness of each district involved in the consolidation, the consolidation election must also follow the procedures prescribed in 20-6-207.

(5) After the county superintendent receives the election certificate provided for in 20-20-416 from the trustees of each district included in a consolidation proposition, he shall determine if the consolidation proposition has been approved in each district. If each district has approved the consolidation proposition, he shall, within 10 days after the receipt of the election certificate, order the consolidation of such districts. If the order is for consolidation with the mutual assumption of bonded indebtedness of each high school district by all districts included in the consolidation order, the order shall specify that all taxable real and personal property of the consolidated district shall assume the bonded indebtedness of each district. In addition, the order shall specify the number of the consolidated high school district. The superintendent shall send a copy of the order to the board of county commissioners and to the trustees of each district incorporated in the consolidation order.

(6) If any district included in the consolidation proposition disapproves the consolidation proposition, the consolidation of all districts fails and the county superintendent shall notify each district of the disapproval of the consolidation proposition.

History: **En. Sec. 2, Ch. 617, L. 1983.**

Cross-References

Election of district trustees following consolidation, 20-3-302.

Number of trustees and nominating districts, 20-3-351 through 20-3-356.

Voluntary consolidation and annexation incentive plan, 20-6-401 through 20-6-408.

Conditions under which school elections called, 20-20-201.

20-6-316. Conditions for high school district annexation. (1) A high school district may be annexed to another high school district located in the same county when:

(a) a third-class district is annexed to a first-class district or a second-class district; or

(b) a second-class district is annexed to a first-class district.

(2) The annexation of high school districts must be conducted under the provisions of 20-6-317.

History: **En. Sec. 3, Ch. 617, L. 1983.**

20-6-317. High school district annexation procedure. A high school district may be annexed to another high school district located in the same county when one of the conditions of 20-6-316 is met in accordance with the following procedure:

(1) At the time the annexation proposition is first considered, the districts involved shall jointly determine whether the annexation is to be made with or without the joint assumption of the bonded indebtedness of the annexing district by the district to be annexed and the annexing district.

(2) An annexation proposition may be introduced in the district to be annexed by either of the following methods:

(a) the trustees may pass a resolution requesting the county superintendent to order an election to consider an annexation proposition for their district; or

(b) not less than 20% of the electors of the district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent requesting an election to consider an annexation proposition for their district.

(3) Before ordering an election on the proposition, the county superintendent must receive from the trustees of the annexing district a resolution giving him the authority to annex such district.

(4) When the county superintendent receives authorization from the annexing district, he shall, within 10 days after the receipt of the resolution or a valid petition from the district to be annexed and as provided by 20-20-201, order the trustees of the district to be annexed to call an annexation election.

(5) (a) The district shall call and conduct an election in the manner prescribed in this title for school elections.

(b) In addition:

(i) if the district to be annexed is to jointly assume with the annexing district the bonded indebtedness of the annexing district, the annexation election must also follow the procedures prescribed in 20-6-318; or

(ii) if the district to be annexed is not to jointly assume with the annexing district the bonded indebtedness of the annexing district, the annexation election must also follow the procedures prescribed in 20-6-319.

(6) After the county superintendent receives the election certificate provided for in 20-20-416 from the trustees of the district conducting the annexation election and if the annexation proposition has been approved by such election, he shall order the annexation of the territory of the high school district voting on such proposition to the high school district that has authorized the annexation to its territory. The order must be issued within 10 days after the receipt of the election certificate and, if it is for annexation with the assumption of bonded indebtedness, must specify that all the taxable real and personal property of the annexed territory shall jointly assume with the annexing district the existing bonded indebtedness of the annexing district. The county superintendent shall send a copy of the order to the board of county commissioners and to the trustees of the districts involved in the annexation order.

(7) If the annexation proposition is disapproved in the district to be annexed, it fails and the county superintendent shall notify each district of the disapproval of the annexation proposition.

History: En. Sec. 4, Ch. 617, L. 1983.

Cross-References

Trustees of district affected by boundary change, 20-3-312.

Voluntary consolidation and annexation incentive plan, 20-6-401 through 20-6-408.

School elections, Title 20, ch. 20.

20-6-318. Consolidation or annexation election with assumption of bonded indebtedness. A consolidation election involving the mutual assumption of bonded indebtedness by the high school districts to be consolidated as prescribed in 20-6-315 or an annexation election involving the joint assumption of bonded indebtedness by the high school districts to be annexed as prescribed in 20-6-317 must comply with the following procedures in addition to those prescribed by this title for other school elections:

(1) In a consolidation election the ballots must read, after stating the consolidation proposition, "FOR consolidation with assumption of bonded indebtedness" and "AGAINST consolidation with assumption of bonded indebtedness".

(2) In an annexation election the ballots must read, after stating the annexation proposition, "FOR annexation with assumption of bonded indebtedness" and "AGAINST annexation with assumption of bonded indebtedness".

(3) Any elector qualified to vote under the provisions of 20-20-301 may vote.

(4) When the trustees in each high school district conducting an election canvass the vote under the provisions of 20-20-415, they shall decide according to the following procedure if the proposition has been approved:

(a) determine if a sufficient number of the qualified electors of the district voted to validate the election and voted to approve the election proposition in the manner required for bond elections by 20-9-428; and

(b) if the proposition is approved under subsection (4)(a), determine the number of votes "FOR" and "AGAINST" the proposition.

(5) If the proposition is disapproved under the provisions of subsection (4)(a), the proposition is disapproved in the district.

History: En. Sec. 5, Ch. 617, L. 1983.

Cross-References

School bonds, Title 20, ch. 9, part 4.

School elections, Title 20, ch. 20.

20-6-319. Consolidation or annexation election without assumption of bonded indebtedness. (1) A consolidation election without the assumption of bonded indebtedness by the high school districts to be consolidated as prescribed in 20-6-315 or an annexation election without the joint assumption of bonded indebtedness by the high school district to be annexed as prescribed in 20-6-317 must be conducted in the manner prescribed by this title for school elections. Any elector qualified to vote under the provisions of 20-20-301 may vote at the election.

(2) In a consolidation election the ballots must read, after stating the consolidation proposition, "FOR consolidation without assumption of bonded indebtedness" and "AGAINST consolidation without assumption of bonded indebtedness". The consolidation proposition is approved by a district if a majority of those voting in a district approve the proposition; otherwise, it is disapproved.

(3) In an annexation election the ballots must read, after stating the annexation proposition, "FOR annexation without assumption of bonded

indebtedness" and "AGAINST annexation without assumption of bonded indebtedness". The annexation proposition is approved by a district if a majority of those voting approve the proposition; otherwise, it is disapproved.

History: En. Sec. 6, Ch. 617, L. 1983.

Cross-References

School elections, Title 20, ch. 20.

20-6-320. Transfer of territory from one high school district to another. (1) A majority of electors of any high school district who are qualified to vote under the provisions of 20-20-301 and who reside in territory that is a part of a high school district may petition the county superintendent to transfer such territory to another high school district if:

(a) the territory adjoins the district to which it is to be attached;

(b) the territory is not located within 3 miles, over the shortest practical route, of an operating school of the district from which it is to be detached;

(c) the transfer of such territory will not reduce the taxable value of the district to less than $300,000 unless the remaining territory of the district contains not less than 50,000 acres of nontaxable Indian land; and

(d) the board of trustees of the school district that would receive the territory has approved the transfer.

(2) The petition must be addressed to the county superintendent and shall:

(a) describe the territory that is requested to be transferred and to what district it is to be transferred;

(b) state the reasons why such transfer is requested; and

(c) state the number of high-school-age children residing in such territory.

(3) On receipt of a valid petition for a territory transfer, the county superintendent shall:

(a) present the petition to the board of county commissioners for certification that the criteria set forth in subsection (1) have been met. The board shall, within 10 days of receiving the petition, return it to the county superintendent with certification, signed by a majority of the board, that such criteria have been met or with a notation, signed by a majority of the board, that the criteria have not been met. The board's certification is binding on the county superintendent unless the county superintendent believes that the certification is in error. A dispute between the board and the county commissioners must be decided by the superintendent of public instruction and the decision of the superintendent of public instruction on the matter is final.

(b) file the petition as certified by the board of county commissioners;

(c) set a hearing place, date, and time for consideration of the petition that is not more than 40 days after receipt of the petition; and

(d) give notice of the place, date, and time of the hearing. The notices must be posted in the districts affected by the request in the manner prescribed in this title for school elections, with at least one notice posted in the territory to be transferred.

(4) The county superintendent shall conduct the hearing as scheduled, and any resident or taxpayer of either affected district must be heard. If the county superintendent considers it advisable and in the best interests of the residents of the territory, he shall grant the petitioned request and order the change of district boundaries to coincide with the boundary description in the

petition. Otherwise, he shall by order deny the request. Either of the orders shall be final 20 days after its date unless it is appealed to the superintendent of public instruction by a resident of either district affected by the territory transfer. The decision of the superintendent of public instruction, after consideration of the material presented at the county superintendent's hearing, is final 30 days after its date.

(5) If a petition to transfer territory from one high school district to another high school district would create a joint high school district or affect the boundary of any existing joint high school district, the petition must be presented to the county superintendent of the county where the territory is located. The county superintendent shall notify any other county superintendents of counties with districts affected by the petition, and the duties prescribed in this section for the county superintendent must be performed jointly by such county officials.

History: En. Sec. 7, Ch. 617, L. 1983; amd. Sec. 1, Ch. 299, L. 1987.

Compiler's Comments

1987 Amendment: Inserted (3)(a); and at end of (3)(b) inserted "as certified by the board of county commissioners".

Cross-References

Trustees of district affected by boundary change, 20-3-312.

20-6-321. High school district consolidation of districts in two or more counties. Any two or more high school districts located in two or more counties and whose territory is contiguous may consolidate to organize a joint high school district. Whenever a joint district consolidation is considered by two or more districts, the procedure for consolidation without the assumption of bonded indebtedness prescribed in 20-6-315 and 20-6-319 must be used, except that each district shall submit its resolution or petition and its election certificate to the county superintendent of its resident county and the several county superintendents shall jointly perform the duties prescribed for the county superintendent in 20-6-315.

History: En. Sec. 8, Ch. 617, L. 1983; amd. Sec. 2, Ch. 15, L. 1985.

Cross-References

Voluntary consolidation and annexation incentive plan, 20-6-401 through 20-6-408.

Proration and calculation of foundation program for joint district, 20-9-305.

20-6-322 through 20-6-324 reserved.

20-6-325. Procedure for creation of new high school district out of existing districts — limitation for creation. (1) To create a new high school district, a petition requesting the creation of a new high school district out of the territory of an existing high school district or districts must be addressed to the county superintendent and must:

(a) describe the territory that is requested to be incorporated in the new district and the taxable value of such territory as shown by the last completed assessment roll;

(b) state the reasons why the creation of a new district is requested; and

(c) be signed by the parents or guardians of not less than 50 children who are at least 14 years old but less than 18 years old and who reside in the territory that would be included in the new district and who reside more than 20 miles over the shortest practical route from an operating high school.

(2) When a county superintendent receives a valid petition requesting the creation of a new district, he shall:

(a) file such petition;

(b) set a hearing place, date, and time for consideration of the petition that is not more than 40 days after the receipt of the petition; and

(c) give notice of the place, date, and time of the hearing. Notices must be posted in the high school districts affected by the request in the manner prescribed in 20-20-204 for school elections, with at least one such notice posted in the territory to be included in the new district.

(3) The county superintendent shall conduct the hearing as scheduled unless before or at the time of the hearing he receives a protest petition signed by a majority of the electors of the proposed new district who are qualified to vote under the provisions of 20-20-301. A valid protest petition conclusively denies the creation of a new district. If a hearing is conducted, any resident or taxpayer of the affected districts must be heard. If the county superintendent considers it advisable and in the best interests of the residents of the proposed new district, he shall grant the petitioned request and order the creation of a new district with its boundaries coinciding with the boundaries defined in the petition. Otherwise, he shall by order deny the request. In the order creating the new district, the effective date for its creation must be the following July 1.

(4) The county superintendent's order may be appealed to the superintendent of public instruction within 30 days after the date of such order. An appeal must be in writing and be signed by not less than 10 residents of the proposed new district. The superintendent of public instruction shall:

(a) call a hearing on the appeal not less than 20 days or more than 30 days from receipt of the appeal;

(b) provide notice of the hearing in the manner prescribed in subsection (2)(c);

(c) consider the material presented at the county superintendent's hearing and pertinent other material; and

(d) render a decision on the creation of such new high school district. The decision is final.

(5) When a new high school district is created, the trustees of the elementary district in which the high school buildings are located are the trustees of the new district. A trustee appointed under the provisions of this section shall serve until a successor is elected at the next regular school election and is qualified.

(6) If the district does not open and operate a school within 2 years after the effective date of the creation of the new district, the order of the county superintendent or, if his order is appealed, the decision of the superintendent of public instruction creating a new district under this section is void and the new district ceases to exist. If the new district does not satisfy this requirement, the territory must be reincorporated in the district or districts in which it was located before the creation of the new district and the trustees are without capacity to act.

(7) If a petition has been filed under the provisions of this section and denied by the county superintendent, no new petition may be filed until 1 year after the final decision on the original petition.

(8) For the purposes of this section, the taxable value of the taxable property of the territory proposed to be included in the new district must be at least $1 million, unless 50,000 acres or more of such proposed new district are nontaxable Indian land, and the taxable value of the taxable property of each existing district from which territory would be detached must be at least $2 million after the territory is detached.

History: En. Sec. 1, Ch. 585, L. 1985; amd. Sec. 1, Ch. 226, L. 1987; amd. Sec. 3, Ch. 371, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 226 in (6) increased time period to 2 years from 1 year.

Chapter 371 in (8) increased "$500,000" to "$1 million"; and at end of (8), after "Indian land", inserted "and the taxable value of the taxable property of each existing district from which territory would be detached must be at least $2 million after the territory is detached".

Part 4

School District Reorganization

20-6-401. Definitions. As used in this part, unless the context clearly indicates otherwise the following definitions apply:

(1) "Component districts" are the elementary or high school districts incorporated into the enlarged district.

(2) "Eligible pupils" shall be the average number belonging for the current school year in the operating schools of the component districts and the tuition pupils residing in the component districts and attending another district's school under the tuition provisions of the school laws, except that the pupils residing in the component district having the largest total number of pupils shall be ineligible for bonus payment consideration.

(3) "Enlarged district" is the elementary or high school district resulting from the consolidation or annexation of two or more component districts.

(4) "General bonus payment" for first- and second-class school districts shall be $300 per eligible pupil per year for a period of 3 years and will be deposited in the enlarged district's general fund. General bonus payment for third-class school districts shall be $500 per eligible pupil per year for a period of 3 years and will be deposited in the enlarged district's general fund. Such payment shall be made from the state school equalization aid account.

(5) "Transportation bonus payment" will be the provision of 66 ⅔% state financing of the on-schedule transportation amount as provided by the transportation provisions of the school laws. When an eligible pupil is entitled to transportation, the enlarged district shall be entitled to the transportation bonus payment for such eligible pupil for a period of 3 years. Such payment shall be made from the state transportation aid account. When the eligible pupil rides a bus providing transportation for ineligible pupils, the 66 ⅔% state financing of the on-schedule amount for this payment shall be prorated to provide such financing for the eligible pupil.

History: En. Sec. 2, Ch. 125, L. 1971; R.C.M. 1947, 75-6541; amd. Sec. 1, Ch. 205, L. 1981; amd. Sec. 1, Ch. 185, L. 1985.

Cross-References

State transportation reimbursement, 20-10-145.

20-6-402. Voluntary consolidation and annexation incentive plan. Sections 20-6-401 through 20-6-408 shall be known as the voluntary consolidation and annexation incentive plan. The purpose of this plan is to provide additional financial assistance to school districts that consolidate or annex under the provisions of 20-6-203, 20-6-205, or 20-6-208 for elementary school districts or 20-6-315 or 20-6-317 for high school districts.

History: En. Sec. 1, Ch. 125, L. 1971; R.C.M. 1947, 75-6540; amd. Sec. 11, Ch. 617, L. 1983.

20-6-403. Application for bonus payment. Whenever two or more elementary school districts consolidate or annex under the provisions of 20-6-203, 20-6-205, or 20-6-208 or two or more high school districts consolidate or annex under the provisions of 20-6-315 or 20-6-317, the enlarged district may make application for the bonus payment as provided herein if such consolidation or annexation shall result in the dissolution of at least one elementary or high school district. Application for the bonus payments must be made during the school year of the order creating the enlarged school district.

History: En. Sec. 3, Ch. 125, L. 1971; R.C.M. 1947, 75-6542; amd. Sec. 12, Ch. 617, L. 1983.

20-6-404. Application to superintendent of public instruction. Application for the bonus payments shall be made to the superintendent of public instruction and shall include a copy of the order issued by the proper officials creating such enlarged school district, the number of eligible pupils as defined herein, and any other information the superintendent of public instruction may deem necessary.

History: En. Sec. 4, Ch. 125, L. 1971; R.C.M. 1947, 75-6543.

20-6-405. Approval or disapproval of application. The superintendent of public instruction shall approve only those applications which demonstrate compliance with the requirements of this plan. When an application is approved, the superintendent of public instruction shall determine the number of eligible pupils for the bonus payments. He shall notify the enlarged district's board of trustees and the county superintendent(s) of the disapproval of the application or of the approval of the application establishing the number of eligible pupils.

History: En. Sec. 5, Ch. 125, L. 1971; R.C.M. 1947, 75-6544.

20-6-406. Disbursal and deposit of bonus payments. On or before June 30 of the next 3 consecutive years following the year of application, the superintendent of public instruction shall disburse the bonus payments for approved applications to the enlarged school district, and such disbursement is statutorily appropriated as provided in 17-7-502. The general bonus payment shall be deposited by the county treasurer in the enlarged district's general fund, and the transportation bonus payment shall be deposited by the county treasurer in the transportation fund. These bonus payments shall not be considered as a part of the regular state equalization aid or state transportation aid received by the enlarged district.

History: En. Sec. 6, Ch. 125, L. 1971; R.C.M. 1947, 75-6545; amd. Sec. 30, Ch. 703, L. 1985.

20-6-407. Effect on plan of reduction in territory. Any reduction in the amount of territory encompassed in the enlarged school district's territory during the 3-year period of bonus payments shall establish an ineligibility of the enlarged district to receive any remaining bonus payments under this plan.

History: En. Sec. 7, Ch. 125, L. 1971; R.C.M. 1947, 75-6546.

20-6-408. Effect of addition of component districts. The subsequent addition of other component districts to the enlarged district shall entitle such enlarged district to additional bonus payments under the provisions of this plan.

History: En. Sec. 8, Ch. 125, L. 1971; R.C.M. 1947, 75-6547.

20-6-409 and 20-6-410 reserved.

20-6-411. Bonded indebtedness to remain with original territory except when assumed by election. Whenever district boundaries are changed in any manner prescribed in this title, the existing bonded indebtedness against any district or territory affected by a change of boundaries shall remain the indebtedness of the original territory against which such bonds were issued and shall be paid by levies on the original territory, except when elementary districts are consolidated with the mutual assumption of bonded indebtedness or when an elementary district is annexed with a joint assumption of the annexing district's bonded indebtedness with the annexing district. Any moneys to the credit of the debt service fund of a district when its boundaries are changed shall be used to pay the existing bond principal and interest of the original territory issuing such bonds as it becomes due or for bond redemption under the bonding provisions of this title.

History: En. 75-6529 by Sec. 188, Ch. 5, L. 1971; R.C.M. 1947, 75-6529.

Cross-References

Redemption of bonds — investment of debt service fund money, 20-9-441.

20-6-412. Property tax valuation after district boundary change. The property tax valuation used under the provisions of 20-9-142 for the purposes of fixing the tax levies, except the debt service fund tax levy, for a district that has had a boundary change at any time before the second Monday in August shall include the property tax valuation of any territory added to the district by such boundary change or exclude the property tax valuation of any territory detached from the district by such boundary change.

History: En. 75-6530 by Sec. 189, Ch. 5, L. 1971; R.C.M. 1947, 75-6530.

20-6-413. Cash disposition when district ceases to exist. Whenever a district shall cease to exist in any manner prescribed in this title, except when districts are consolidated, the cash on hand to the credit of the funds of the district and the debts of such district shall be allocated in the following manner:

(1) Any cash to the credit of the district shall be used to pay any debts of the district, including bonded indebtedness, except that any cash available in the debt service fund shall be used first to pay bond interest and all outstanding bonds.

(2) If any cash remains to the credit of the district after paying its debts, the cash shall be transferred by the county treasurer to the credit of the district or districts assuming its territory. When the territory is assumed by

more than one district, the remaining cash shall be prorated between the districts on the basis of the number of children attending school and residing within the territory assumed by each district as determined by the county superintendent.

(3) If any debts, other than bonded indebtedness, remain as an obligation of the district after the cash has been utilized under the provisions of subsection (1) above, the debts shall be assigned in the same manner prescribed for the transfer of cash under subsection (2) above.

History: En. 75-6532 by Sec. 191, Ch. 5, L. 1971; amd. Sec. 5, Ch. 137, L. 1973; R.C.M. 1947, 75-6532.

20-6-414. Cash disposition when districts consolidated. Whenever two or more districts are consolidated without the mutual assumption of bonded indebtedness, all cash and debts, other than cash credited to the debt service fund and debts for bonded indebtedness, shall be credited or debited to the same types of funds of the consolidated district as the funds from which they were transferred by the county treasurer. In addition, when two or more elementary districts are consolidated with the mutual assumption of bonded indebtedness, the cash credited to the debt service fund and the bonded indebtedness also shall be transferred to a similar fund of the consolidated district.

History: En. 75-6533 by Sec. 192, Ch. 5, L. 1971; R.C.M. 1947, 75-6533.

20-6-415. Cash disposition when new elementary district created. Whenever a new district is created under the provisions of 20-6-217, the end-of-the-year cash balance in each fund of each district having territory that has been placed in the new district, except the debt service fund, shall be apportioned by the county superintendent on the basis of the proportion that the number of school children residing in the new district is of the total number of school children residing in the old district before the creation of the new district. After the new district has operated a school for 1 month, the county superintendent shall order the county treasurer to transfer the cash to which the new district is entitled to the credit of the fund of the new district which corresponds with the fund from which it was transferred. The new district shall not assume any debts of the old district other than existing bonded indebtedness which remains an obligation against the taxable property of the territory included in the new district.

History: En. 75-6534 by Sec. 193, Ch. 5, L. 1971; amd. Sec. 6, Ch. 137, L. 1973; R.C.M. 1947, 75-6534.

20-6-416. No cash disposition when territory transferred. Whenever only a portion of the territory of one district is transferred to another district, all cash and debts, other than bonded indebtedness, shall be retained by the district originally realizing the cash or debt.

History: En. 75-6535 by Sec. 194, Ch. 5, L. 1971; R.C.M. 1947, 75-6535.

20-6-417. Property disposition when district boundaries changed. Whenever district boundaries are changed, title to the real and personal property of the districts involved in such boundary change shall vest in the district which encompasses the territory where such real or personal property was located at the time the legal procedure to authorize the boundary change was introduced. The disposition or utilization of such property will be in the discretion of the trustees of the district encompassing the territory of its location, as provided by law.

History: **En. 75-6536 by Sec. 195, Ch. 5, L. 1971; R.C.M. 1947, 75-6536.**

Cross-References

Power of trustees over property, 20-3-324, 20-6-602.

20-6-418. Surrender of records when district ceases to exist. Within 10 days after any district ceases to exist, the trustees shall surrender all minutes, documents, and other records of the district to the trustees of the district assuming its territory or, if more than one district assumes its territory, to the county superintendent.

History: **En. 75-6537 by Sec. 196, Ch. 5, L. 1971; R.C.M. 1947, 75-6537.**

Part 5

Opening and Closing of Schools

Part Cross-References

Power of trustees to open and close schools, 20-3-324(7).

20-6-501. Definition of various schools. As used in this title, unless the context clearly indicates otherwise, the term "school" means an institution for the teaching of children that is established and maintained under the laws of the state of Montana at public expense. The trustees of any district shall designate the grade assignments for the schools of the district, but for the purposes of this title each school shall be known as:

(1) an elementary school when it comprises the work of any combination of kindergarten, other preschool programs, or the first eight grades or their equivalents. A middle school is a school comprising the work of grades 4 through 8 or any combination thereof that has been accredited as a middle school under the provisions of 20-7-102. When an accredited junior high school or an accredited 6-year high school is operated by the district, grades 7 and 8 or their equivalents shall not be considered as elementary grades.

(2) a high school when it comprises the work of one or more grades of schoolwork or their equivalents intermediate between the elementary schools and the institutions of higher education of the state of Montana. Types of high schools shall be designated as follows:

(a) a junior high school is a school comprising the work of grades 7 through 9 or their equivalents that has been accredited as a junior high school under the provisions of 20-7-102;

(b) a senior high school is a school which comprises the work of grades 10 through 12 or their equivalents and which is operated in conjunction with a junior high school;

(c) a 6-year high school is a school comprising the work of grades 7 through 12 or their equivalents that has been accredited as a 6-year high school under the provisions of 20-7-102;

(d) a 4-year high school is a school comprising the work of grades 9 through 12 or their equivalents;

(e) a county high school is a 4-year high school operated as an agency of county government and established under the provisions of the acts of March 3, 1899, March 14, 1901, and any subsequent amendments thereto.

History: En. 75-6601 by Sec. 199, Ch. 5, L. 1971; amd. Sec. 1, Ch. 352, L. 1974; R.C.M. 1947, 75-6601(1), (2); amd. Sec. 10, Ch. 658, L. 1987.

Compiler's Comments

1987 Amendment: Deleted (2)(f) that read: "(f) a postsecondary vocational-technical center established under the provisions of 20-7-311".

20-6-502. Opening or reopening of elementary school. The trustees of any elementary district may open or reopen an elementary school of the district when such opening or reopening has been approved in accordance with the following procedure:

(1) The parents of at least three pupils who would attend the opened or reopened school petition the trustees of the district to open or reopen a school during the ensuing school fiscal year. Such petition shall identify the school, state the reasons for requesting the opening or reopening, and give the names of the children who would attend such school.

(2) If the trustees approve the opening or reopening of a school, they shall send the petition with a copy of their approval resolution to the county superintendent. The county superintendent shall review the petition to determine if the average number belonging (ANB) of such school would be five or more.

(3) The county superintendent shall present the petition, trustees' approval, and his findings on the probable ANB to the board of county commissioners (budget board) for their consideration. The budget board shall deny the opening or reopening of any school if the county superintendent's enrollment estimate for such school is less than five ANB. In all other cases, the budget board may approve or disapprove the requested opening or reopening of the elementary school.

(4) If the budget board approves a school opening or reopening, the county superintendent shall send a copy of such approval, along with the petition, trustees' approval, and his estimate of the probable ANB, to the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the requested opening or reopening of the elementary school. If the opening or reopening is approved, the superintendent of public instruction shall approve or adjust the ANB estimate of the county superintendent for such school and such ANB amount shall be used for budgeting and foundation program purposes during the ensuing school fiscal year. No ANB amount shall be approved for the ensuing school fiscal year for an opening or reopening school when the request for such school has not been received by the superintendent of public instruction before the fourth Monday of June.

History: En. 75-6602 by Sec. 200, Ch. 5, L. 1971; R.C.M. 1947, 75-6602.

Cross-References

ANB defined, 20-1-101.

Calculation of average number belonging, 20-9-311.

Circumstances under which the regular average number belonging may be increased, 20-9-313.

20-6-503. Opening or reopening of a high school. (1) The trustees of any high school district may open or reopen a high school of the district or a branch of a high school of the district when such opening or reopening has been approved by the superintendent of public instruction; except when a county high school is discontinued by a unification action, the trustees may establish, by resolution, a high school to be operated by the high school district without further action or approval. When the trustees of a high school district resolve to open or reopen a high school, they shall apply to the superintendent of public instruction for approval to open or reopen such school by June 1 before the school fiscal year in which they intend to open or reopen the high school. Such application shall state:

(a) their reasons why the high school should be opened or reopened;

(b) the probable enrollment of such high school;

(c) the distance and road conditions of the route to neighboring high schools;

(d) the taxable value of the district;

(e) the building and equipment facilities available for such high school;

(f) the planned course of instruction for such high school;

(g) the planned methods of complying with high school standards of accreditation; and

(h) any other information that may be required by the superintendent of public instruction.

(2) The superintendent of public instruction shall investigate the application for the opening or reopening of a high school and shall approve or disapprove the opening of the high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the high school district trustees may open such high school.

(3) Whenever the opening or reopening of a high school is approved for the ensuing school fiscal year, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the high school. The ANB determined by the county superintendent shall be used for budgeting and foundation program purposes.

(4) Nothing herein contained shall be construed so as to preclude the trustees of a high school district from establishing more than one high school in the district.

History: En. 75-6603 by Sec. 201, Ch. 5, L. 1971; R.C.M. 1947, 75-6603.

Cross-References

ANB defined, 20-1-101.

School fiscal year, 20-1-301.

Calculation of average number belonging, 20-9-311.

Circumstances under which the regular average number belonging may be increased, 20-9-313.

20-6-504. Opening of a junior high school. (1) The trustees of any elementary district and the trustees of the high school district in which such elementary district is located may open a junior high school when such opening has been approved by the superintendent of public instruction; except that when the high school district operates a county high school, the opening of a junior high school shall be approved under the provisions of 20-6-505.

(2) When the trustees of such districts resolve to open a junior high school, they shall jointly apply to the superintendent of public instruction for approval to open such school by June 1 before the school fiscal year in which they intend to open the junior high school. The application shall contain such information as is required under 20-6-503 for an application to open a high school.

(3) The superintendent of public instruction shall investigate the application for the opening of a junior high school and shall approve or disapprove the opening of the junior high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the trustees of the elementary district and the high school district may jointly open such school.

(4) Whenever the opening of a junior high school is approved for the ensuing school fiscal year, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the junior high school. The ANB determined by the county superintendent shall be used for budgeting and foundation program purposes during the ensuing school fiscal year.

History: **En. 75-6604 by Sec. 202, Ch. 5, L. 1971; R.C.M. 1947, 75-6604.**

Cross-References

ANB defined, 20-1-101.

Calculation of average number belonging, 20-9-311.

Circumstances under which the regular average number belonging may be increased, 20-9-313.

20-6-505. Opening a junior high school when high school district operates a county high school. (1) Whenever the trustees of an elementary district and a high school district operating a county high school have formed a joint board of trustees under the provisions of 20-3-361, such joint board of trustees may open a junior high school under the provisions of this section.

(2) When the joint board of trustees resolves to open a junior high school, they shall order an election under the provisions of 20-20-201 to submit a proposition to the electors of the district to approve or disapprove the trustees' resolution to open a junior high school. The joint board of trustees shall call and conduct the election in the manner prescribed in this title for school elections and equally share the cost of the election. Any elector qualified to vote under the provisions of 20-20-301 may vote on the proposition. If a majority of the electors voting at the election approve the proposition, the trustees shall apply to the superintendent of public instruction for approval to open a junior high school. If a majority of the electors voting at the election disapprove the proposition, a junior high school shall not be opened by the joint board of trustees.

(3) The application to the superintendent of public instruction for the approval to open a junior high school shall be submitted by June 1 following the election approving the opening of the junior high school. The application shall contain such information as is required under 20-6-503 for an application to open a high school.

(4) The superintendent of public instruction shall investigate the application for the opening of a junior high school and shall approve or disapprove the opening of the junior high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the joint board of trustees may open the junior high school.

(5) At any time the trustees of the elementary district and the trustees of the high school district shall cease to form a joint board of trustees under the provisions of 20-3-361, the junior high school shall be closed and the districts shall assume the provision of an educational program for the junior high school pupils of their respective districts.

History: **En. 75-6605 by Sec. 203, Ch. 5, L. 1971; R.C.M. 1947, 75-6605.**

Cross-References
Powers of joint board of trustees, 20-3-362.
Circumstances under which the regular average number belonging may be increased, 20-9-313.
School elections, Title 20, ch. 20.

20-6-506. Budgeting and cost sharing when junior high school operated by elementary district and high school district operating a county high school. (1) Whenever the opening of a junior high school is approved for the ensuing school fiscal year under 20-6-505, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the junior high school. The ANB determined by the county superintendent and the ANB actually realized in subsequent school fiscal years shall be applied under 20-9-320 to prorate the maximum-general-fund-budget-without-a-voted-levy between the elementary and high school districts. Each district shall adopt its general fund budget on the basis of the prorated amount and shall finance its proportionate share of the cost of operating the junior high school.

(2) The cost of operating the junior high school shall be prorated between the elementary district and the high school district on the basis of the ratio that the number of pupils of their district is to the total enrollment of the junior high school.

History: En. 75-6606 by Sec. 204, Ch. 5, L. 1971; amd. Sec. 13, Ch. 266, L. 1977; R.C.M. 1947, 75-6606.

Cross-References
ANB defined, 20-1-101.
Powers of joint board of trustees, 20-3-362.
Calculation of average number belonging, 20-9-311.

20-6-507. Opening of a middle school. The trustees of any elementary district may open a middle school when such opening has been approved by the superintendent of public instruction. The state superintendent shall investigate an application for the opening of a middle school and shall approve or disapprove the opening before the fourth Monday in June preceding the first year of intended operation. When a middle school opening is approved, the county superintendent shall estimate the ANB after investigating the probable enrollment for the middle school. The ANB so estimated shall be used for budgeting and foundation program purposes during the ensuing school fiscal year.

History: En. 75-6609 by Sec. 2, Ch. 352, L. 1974; R.C.M. 1947, 75-6609.

Cross-References
ANB defined, 20-1-101.
Calculation of average number belonging, 20-9-311.

20-6-508. Kindergarten through grade twelve system. Unless otherwise required by law, the trustees of an elementary district in which a high school is located and the trustees of the high school district operating such high school may organize the schools of their districts to form a kindergarten through grade 12 school system, provided that the high school and elementary trustees shall not assume responsibility for the administration of grades which are not properly within their jurisdiction.

History: En. 75-6601 by Sec. 199, Ch. 5, L. 1971; amd. Sec. 1, Ch. 352, L. 1974; R.C.M. 1947, 75-6601(3).

20-6-509. School closure. Whenever it is in the best interest of the pupils affected, the trustees of any district may close any school of the district, except that a junior high school may be closed only by joint action of the trustees of the elementary district and the high school district in which the school is located. Whenever the trustees of a district close a school of the district, they shall provide the pupils of the closed school with transportation and tuition, if required, to other schools in accordance with the provisions of this title.

History: En. 75-6607 by Sec. 205, Ch. 5, L. 1971; R.C.M. 1947, 75-6607; amd. Sec. 3, Ch. 384, L. 1979.

Cross-References

Powers of joint board of trustees, 20-3-362.

Nonoperating fund, 20-9-505, 20-9-506.

Part 6

School Property

Part Cross-References

Proscribed acts relating to contracts and claims, Title 2, ch. 2, part 2.

Sale of county property to school district, 7-8-2216.

Use of district property by home guard, 10-1-703.

School officers not to act as agents, 20-1-201.

Conflict of interest, 20-1-205.

Liability of parents for pupil's damage to property, 20-5-201, 40-6-237, 40-6-238.

Authority of Board of Public Education when school property used, 20-7-804.

Conflicts of interests, letting contracts, and calling for bids, 20-9-204.

Trustees to execute all contracts, 20-9-213.

Additional levy for furnishing school facilities, 20-9-353.

Nonoperating fund for maintenance of district property, 20-9-505.

Public school fund and grants to schools, Title 20, ch. 9, part 6.

20-6-601. Power to accept gifts. All school districts are hereby granted the power and authority to accept, receive, take, hold, and possess any gift, donation, grant, devise, or bequest of property, real or personal, and the right to own, hold, work, and improve the same.

History: En. Sec. 1, Ch. 47, L. 1927; re-en. Sec. 5668.17, R.C.M. 1935; R.C.M. 1947, 11-1006(part).

Cross-References

Authority to request, accept, and disburse money, 20-3-208.

Acceptance and expenditure of federal money for state, 20-9-603.

Gifts, legacies, devises, and administration of endowment fund, 20-9-604.

20-6-602. Trustees' power over property. The trustees of any district other than a high school district operating a county high school shall have the power and the responsibility to hold in trust all real and personal property of the district for the benefit of the schools and children of the district. In the name of the county, the trustees of a high school district operating a county high school, as defined by 20-6-101, shall have the power and the responsibility to hold in trust all real and personal property of the district for the benefit of the schools and children of the district.

History: En. 75-8201 by Sec. 473, Ch. 5, L. 1971; R.C.M. 1947, 75-8201.

20-6-603. Trustees' authority to acquire or dispose of sites and buildings — when election required. (1) The trustees of any district shall have the authority to purchase, build, exchange, or otherwise acquire or sell or otherwise dispose of sites and buildings of the district. Such action shall not be taken by the trustees without the approval of the qualified electors of the district at an election called for such approval unless:

(a) a bond issue has been authorized for the purpose of constructing, purchasing, or acquiring the site or building;

(b) an additional levy under the provisions of 20-9-353 has been approved for the purpose of constructing, purchasing, or acquiring the site or building;

(c) the cost of constructing, purchasing, or acquiring the site or building is financed without exceeding the maximum-general-fund-budget-without-a-vote amount prescribed in 20-9-316 through 20-9-321 and, in the case of a site purchase, the site has been approved under the provisions of 20-6-621; or

(d) moneys are otherwise available under the provisions of this title and the ballot for the site approval for such building incorporated a description of the building to be located on the site.

(2) When an election is conducted under the provisions of this section, it shall be called under the provisions of 20-20-201 and shall be conducted in the manner prescribed by this title for school elections. An elector qualified to vote under the provisions of 20-20-301 shall be permitted to vote in such election. If a majority of those electors voting at the election approve the proposed action, the trustees may take the proposed action.

History: En. 75-8204 by Sec. 476, Ch. 5, L. 1971; R.C.M. 1947, 75-8204.

Cross-References

Mail ballot elections prohibited, 13-19-104.

Bond issues for certain purposes, 20-9-403.

Purposes and petition for county high school bonds, 20-9-452.

Election required for expenditure of prorated county bond proceeds, 20-9-454.

Purpose and authorization of a building reserve fund by election, 20-9-502.

Budgeting, tax levy, and use of the building reserve fund, 20-9-503.

Building fund to be credited when property sold, 20-9-508.

Lease or sale of district property, 20-15-107.

School elections, Title 20, ch. 20.

20-6-604. Sale of property when resolution passed after hearing — appeal procedure. (1) Whenever the trustees of any district determine that a site, building, or any other real or personal property of the district is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of such district, the trustees may sell or otherwise dispose of such real or personal property in accordance with this section and without conforming to the provisions of 20-6-603. If a decision to sell or dispose of property is made, the trustees shall adopt a resolution to sell or otherwise dispose of such district real or personal property because it is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of the district.

(2) The resolution may not become effective for 14 days after the notice required in subsection (3) is made.

(3) The trustees shall cause notices of the resolution to be published in a newspaper of general circulation in the district. If there is no newspaper of general circulation, the trustees shall cause notices of the resolution to be posted in the manner required for school elections in 20-20-204.

(4) Any taxpayer may appeal the resolution of the trustees, at any time prior to the effective date of the resolution, to the district court by filing a verified petition with the clerk of such court and serving a copy of such petition upon the district. The petition shall set out in detail the objections of the petitioner to the adoption of the resolution or to the disposal of the property. The service and filing of the petition shall stay the resolution until final

determination of the matter by the court. The court shall immediately fix the time for a hearing at the earliest convenient time. At the hearing, the court shall hear the matter de novo and may take testimony as it deems necessary. Its proceedings shall be summary and informal, and its decision shall be final.

(5) The trustees of a district that has adopted a resolution to sell or otherwise dispose of district real or personal property and, if appealed, has been upheld by the court shall sell or dispose of such real or personal property in any reasonable manner that they determine to be in the best interests of the district. The moneys realized from the sale or disposal shall be credited to the debt service fund, building fund, general fund, or any combination of these three funds, at the discretion of the trustees.

History: En. 75-8205 by Sec. 477, Ch. 5, L. 1971; amd. Sec. 8, Ch. 91, L. 1973; R.C.M. 1947, 75-8205; amd. Sec. 1, Ch. 150, L. 1987.

Compiler's Comments

1987 Amendment: In (1), at beginning of second sentence (former beginning of (2)), substituted "If a decision to sell or dispose of property is made, the trustees shall adopt a resolution" for "The trustees of any district shall adopt a resolution stating their intention" and made minor change in phraseology; deleted remainder of former (2) that read: "When such a resolution is adopted, the trustees shall set the date of the trustees' meeting when they shall consider the adoption of a resolution to authorize the sale or other disposition of such real or personal property. The trustees shall cause notices to be posted in the manner required for school elections that state the text of the resolution of intention to sell or dispose of the real or personal property and the time, date, and place when the resolution authorizing the sale or other disposition will be considered for adoption. Any elector of the district shall have the right to be present and protest the passage of the resolution. If the trustees adopt the resolution and an elector has protested such adoption at the trustee meeting conducted for the hearing on the resolution, such resolution shall not become effective for 5 days after the date of its adoption"; inserted (2) and (3); and in (4), near beginning of first sentence, substituted "prior to the effective date" for "within 5 days after the date".

Cross-References

Purpose and definition of foundation program and general fund, 20-9-301.

Separate debt service fund maintained by County Treasurer, 20-9-440.

Building fund to be credited when property sold, 20-9-508.

School election notice, 20-20-204.

20-6-605. Land acquired by conditional deed or at will or sufferance. Whenever, after March 17, 1939, the trustees acquire land by deed conditioned upon the use of the land for the conduct of school or related activities or whenever land has been used by the trustees at the will or sufferance of the land's owner or claimant and the district has constructed buildings or made other improvements on the land, the owner or claimant may repossess the land if it ceases to be used as specified by deed or, if not specified, for the conduct of school or related activities. However, the owner or claimant shall first notify the trustees in writing of his intent to repossess the land, and the trustees shall thereafter have 1 year to remove any buildings or improvements placed there by the district. The trustees' failure to remove the buildings or improvements within that time shall constitute a forfeiture of such buildings or improvements. Before the owner or claimant shall have the right to give notice of repossession, the district's intention to permanently cease using the land shall have been established by resolution of the trustees and vote of the district's electors.

History: En. 75-8202 by Sec. 474, Ch. 5, L. 1971; R.C.M. 1947, 75-8202.

Cross-References

Right of reentry, Title 70, ch. 16, part 4.

20-6-606. Letting contracts for school facilities. Any letting of contracts related to the construction or furnishing of a new, enlarged, remodeled, or repaired building shall be conducted under the provisions of 20-9-204.

History: En. 75-8210 by Sec. 482, Ch. 5, L. 1971; R.C.M. 1947, 75-8210.

Cross-References

Power of trustees to execute contracts, 20-9-213.

20-6-607. Leasing district property and disposition of any rentals. The trustees of any district may rent, lease, or let any buildings, land, or facilities of the district under the terms specified by the trustees. Any money collected for such rental, lease, or letting may, in the discretion of the trustees, be used for any proper school purpose and deposited in such fund as the trustees consider appropriate.

History: En. 75-8211 by Sec. 483, Ch. 5, L. 1971; amd. Sec. 2, Ch. 88, L. 1973; amd. Sec. 3, Ch. 424, L. 1977; R.C.M. 1947, 75-8211.

Cross-References

Apportionment of rents from school lands, Art. X, sec. 5, Mont. Const.

Housing and dormitory fund, 20-9-509.

Oil and gas leases, 82-10-201 through 82-10-204.

20-6-608. Authority and duty of trustees to insure district property. The trustees of any district shall have the authority and it shall be their duty to insure any or all real and personal property of the district.

History: En. 75-8212 by Sec. 484, Ch. 5, L. 1971; R.C.M. 1947, 75-8212.

Cross-References

Political subdivision tax levy to pay premiums, 2-9-212.

20-6-609. Trustees' authority to acquire property by lease-purchase agreement. The trustees of a district may acquire real and personal property by an agreement to lease with an option to purchase. If real property is acquired, the trustees shall comply with 20-6-603.

History: En. Sec. 1, Ch. 144, L. 1985.

Cross-References

Montana Procurement Act — local government adoption of provisions, 18-4-124.

Conflicts of interests, letting contracts, and calling for bids, 20-9-204.

Duties of trustees — contracts, 20-9-213.

20-6-610 through 20-6-620 reserved.

20-6-621. Selection of school sites, approval election, and lease of state lands. (1) The trustees of any district shall have the authority to select the sites for school buildings or for other school purposes, but such selection shall first be approved by the qualified electors of the district before any contract for the purchase of such site is entered into by the trustees, except the trustees shall have the authority to purchase or otherwise acquire property contiguous to an existing site that is in use for school purposes without a site approval election. Furthermore, the trustees may take an option on a site prior to the site approval election.

(2) The election for the approval of a site shall be called under the provisions of 20-20-201 and shall be conducted in the manner prescribed by this title for school elections. An elector who may vote at a school site election

shall be qualified to vote under the provisions of 20-20-301. If a majority of those voting at the election approve the site selection, the trustees shall have the authority to purchase such sites. A site approval election shall not be required when the site was specifically identified in an election at which an additional levy or the issuance of bonds was approved for the purchase of such site.

(3) Any site for a school building or other building of the district that is selected or purchased by the trustees shall:

(a) be in a place that is convenient, accessible, and suitable;

(b) comply with the minimum size and other requirements prescribed by the department of health and environmental sciences of the state of Montana; and

(c) comply with the statewide building regulations, if any, promulgated by the department of commerce.

(4) The board of land commissioners shall have the authority to sell, at the appraised value, or to lease for any period of time less than 99 years, at an amount of $1 per year, to a district any tract of state land of not more than 10 acres to be used as a school site in such district.

History: En. 75-8203 by Sec. 475, Ch. 5, L. 1971; R.C.M. 1947, 75-8203; amd. Sec. 75, Ch. 575, L. 1981; amd. Sec. 1, Ch. 352, L. 1985.

Cross-References

Mail ballot elections prohibited, 13-19-104.

Lease or purchase of state property for vocational-technical center purposes, 20-16-108.

Building construction standards, Title 50, ch. 60.

Board of Land Commissioners, Title 77, ch. 1, part 2.

20-6-622. Review and approval of school building plans and specifications. (1) No school building, either publicly or privately owned or operated, in which students are housed or instructed may be built, enlarged, or remodeled until the plans and specifications for such construction have been submitted to and approved by the department of commerce or a municipality or county with a building code adopted as provided in 50-60-301.

(2) The plans and specifications required in subsection (1) shall show in detail the proposed construction of the building and shall illustrate and indicate conformity with the applicable building code.

(3) As a service to districts, the superintendent of public instruction may review the plans and specifications required in subsection (1) to assist the districts in designing facilities for optimum utilization.

History: En. 75-8206 by Sec. 478, Ch. 5, L. 1971; amd. Sec. 11, Ch. 504, L. 1977; R.C.M. 1947, 75-8206; amd. Sec. 1, Ch. 274, L. 1983; amd. Sec. 2, Ch. 352, L. 1985.

Cross-References

Building construction standards, Title 50, ch. 60.

20-6-623. Repealed. Sec. 15, Ch. 384, L. 1979.

History: En. Sec. 1, Ch. 49, L. 1973; R.C.M. 1947, 75-8206.1.

20-6-624. School building plans and specifications approval before payment. (1) The trustees of a district shall not make any payment under any contract for the construction of school facilities until the plans and specifications for such construction have been approved under the provisions of 20-6-622.

(2) Any contractor, architect, trustee, or any other person, firm, or corporation who shall violate the provisions of 20-6-622, this section, or any regulation promulgated by the state board of health and environmental sciences or the state fire marshal shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than $100 or more than $500.

History: **En. 75-8208 by Sec. 480, Ch. 5, L. 1971; R.C.M. 1947, 75-8208.**

Cross-References

Lapse of budgeted appropriations and provision for unpaid claims, 20-9-209.

Fire safety in public buildings, Title 50, ch. 61.

20-6-625. Authorization to lease buildings or land for school purposes. The trustees of any district may lease buildings or land suitable for school purposes when it is within the best interests of the district to lease such building or land from the county, municipality, another district, or any person. The lease may be for a term of not more than 3 years unless prior approval of the qualified electors of the district is obtained in the manner prescribed by law for school elections, in which case the lease may be for a term of not more than 99 years. Whenever the lease is for a period of time that is longer than the current school fiscal year, the lease requirements for the succeeding school fiscal years shall be an obligation of the final budgets for such years.

History: **En. 75-8209 by Sec. 481, Ch. 5, L. 1971; amd. Sec. 2, Ch. 424, L. 1977; R.C.M. 1947, 75-8209.**

Cross-References

School fiscal year, 20-1-301.

Lease or purchase of state property for vocational-technical center purposes, 20-16-108.

School elections, Title 20, ch. 20.

20-6-626 through 20-6-630 reserved.

20-6-631. When contracts for architectural services required. Whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of a school district exceeds $50,000 and requires architectural services, such services shall be by contract.

History: **En. 75-6815 by Sec. 1, Ch. 370, L. 1975; R.C.M. 1947, 75-6815.**

Cross-References

Architects on public buildings to be certified, 18-2-113.

Seal and signature of architect on plans, 18-2-114.

20-6-632. Repealed. Sec. 1, Ch. 422, L. 1979.

History: **En. 75-6816 by Sec. 2, Ch. 370, L. 1975; R.C.M. 1947, 75-6816.**

20-6-633. Negotiation of fees. After selecting a firm, the trustees shall negotiate with the selected firm a fair and reasonable fee for the architectural services as described by the school district's scope of the work. In the event the trustees and the firm are unable to negotiate a fair and reasonable fee, the trustees may select another firm, provided the trustees again give reasonable public notice of their selection.

History: **En. 75-6817 by Sec. 3, Ch. 370, L. 1975; R.C.M. 1947, 75-6817.**

20-6-634. Tentative and final proposals — public meetings. Following the awarding of the contract, the trustees shall meet as often as necessary with the architectural firm to review the firm's plans and proposals. At least two of these meetings, one to review the firm's preliminary plans and one to review the firm's final proposals, shall be public meetings held after the trustees have given reasonable public notice. At these meetings the trustees shall consider any questions and testimony from the public.

History: En. 75-6818 by Sec. 4, Ch. 370, L. 1975; R.C.M. 1947, 75-6818.

Cross-References

Open meetings, Title 2, ch. 3, part 2.

Meetings and quorum, 20-3-322.

20-6-635. Contracts with Montana firms encouraged. The trustees are encouraged but not required to award architectural contracts to firms based or operating in Montana.

History: En. 75-6819 by Sec. 5, Ch. 370, L. 1975; R.C.M. 1947, 75-6819.

20-6-636. Prohibition against contingent fees — penalty. (1) Each contract entered into by a school district for architectural services shall contain a prohibition against contingent fees as follows: "The architectural firm warrants that it has not employed or retained any company or person, other than a bona fide full-time employee, to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide full-time employee, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement." Upon the breach or violation of this prohibition, the trustees shall have the right to terminate the agreement without liability and, at their discretion, to deduct from the contract price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

(2) Any individual, corporation, partnership, firm, or company, other than a bona fide full-time employee, is prohibited from offering, agreeing, or contracting to solicit or secure school district contracts for architectural services for any other individual, company, corporation, partnership, or firm.

(3) A public official or employee is prohibited from soliciting or securing, whether for consideration or not, a contract for professional services for another.

(4) A person convicted of violating subsections (1), (2), or (3) of this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 75-6820 by Sec. 6, Ch. 370, L. 1975; R.C.M. 1947, 75-6820.

Cross-References

Proscribed acts related to contracts and claims, Title 2, ch. 2, part 2.

Conflicts of interest, letting contracts, and calling for bids, 20-9-204.

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CHAPTER 7

SCHOOL INSTRUCTION AND SPECIAL PROGRAMS

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Chapter Cross-References

Educational goals and duties, Art. X, sec. 1, Mont. Const.

Tax checkoff for agriculture in Montana schools, 15-30-151, 15-30-152.

Part 1

Accreditation and Curriculum

20-7-101. Standards of accreditation. (1) Standards of accreditation for all schools shall be adopted by the board of public education upon the recommendations of the superintendent of public instruction.

(2) Standards for the retention of school records must be as provided in 20-1-212.

History: En. 75-7501 by Sec. 372, Ch. 5, L. 1971; R.C.M. 1947, 75-7501; amd. Sec. 2, Ch. 543, L. 1983.

20-7-102. Accreditation of schools. (1) Every school year the conditions under which each elementary school, middle school, junior high school, and high school operates shall be reviewed by the superintendent of public instruction to determine each school's compliance with the standards of accreditation. The accreditation status of every school shall then be established by the board of public education upon the recommendation of the superintendent of public instruction, and notification of such status for the applicable school year shall be given to each district.

(2) A nonpublic school may, through its governing body, request that the board of public education accredit the school. Nonpublic schools may be accredited in the same manner as provided in subsection (1).

History: En. 75-7502 by Sec. 373, Ch. 5, L. 1971; amd. Sec. 4, Ch. 352, L. 1974; R.C.M. 1947, 75-7502; amd. Sec. 1, Ch. 270, L. 1979; amd. Sec. 1, Ch. 150, L. 1983.

Cross-References

Definitions of various schools, 20-6-501.

20-7-103 through 20-7-110 reserved.

20-7-111. Instruction in public schools. The board of public education shall define and specify the basic instructional program for pupils in public schools, and such program shall be set forth in the standards of accreditation. Other instruction may be given when approved by the board of trustees.

History: En. 75-7503.1 by Sec. 1, Ch. 137, L. 1975; R.C.M. 1947, 75-7503.1.

Cross-References

Duty of Superintendent or principal to recommend course of instruction, 20-4-402.

Enrollment in private school providing equivalent instruction as grounds for failure to enroll in public schools, 20-5-102.

Nonpublic school requirements for compulsory enrollment exemption, 20-5-109.

20-7-112. Sectarian publications prohibited and prayer permitted. No publication of a sectarian or denominational character shall be used or distributed in any school or be included in the school library. Instruction shall not be given in sectarian or denominational doctrines. However, any teacher, principal, or superintendent may open the school day with a prayer.

History: En. 75-7521 by Sec. 392, Ch. 5, L. 1971; R.C.M. 1947, 75-7521.

Cross-References

Freedom of religion guaranteed, Art. II, sec. 5, Mont. Const.

Teaching of sectarian tenets or requiring attendance at religious service prohibited, Art. X, sec. 7, Mont. Const.

Religious instruction released time program, 20-1-308.

20-7-113. Maintenance of curriculum guide file and publishing curriculum guides by superintendent of public instruction. The superintendent of public instruction shall collect and maintain a file of curriculum guides to be made available to districts for the use of schools in planning courses of instruction. He may prepare, publish, and distribute curriculum guides for the use of schools in planning courses of instruction. He may solicit the assistance of educators and other qualified persons in the preparation of curriculum guides.

History: En. 75-7505 by Sec. 376, Ch. 5, L. 1971; R.C.M. 1947, 75-7505.

20-7-114. Instructional assistance by superintendent of public instruction. The superintendent of public instruction shall, at the request of the district or county superintendent, assist the schools with the planning, implementation, operation, and evaluation of instruction through in-service training and individual consultation.

History: En. 75-7506 by Sec. 377, Ch. 5, L. 1971; R.C.M. 1947, 75-7506.

Cross-References

Pupil-instruction-related day, 20-1-304.

20-7-115. Private music instruction. Schools may grant credit to pupils completing courses of private music instruction conducted outside of school hours and at the pupils' own expense. The instruction shall be provided by a teacher holding a valid Montana teacher's certificate with a music endorsement. The district granting such credit shall provide adequate supervision for the instruction and shall determine the allowable credit for such courses.

History: En. 75-7508 by Sec. 379, Ch. 5, L. 1971; R.C.M. 1947, 75-7508.

20-7-116. Supervised correspondence study. The trustees of any district may provide supervised correspondence study for a pupil when it is impossible for him to attend a school due to the isolation of his residence or his mental or physical incapacity. Supervision of the correspondence course shall be provided by the district superintendent or the county superintendent if there is no district superintendent.

History: En. 75-7510 by Sec. 381, Ch. 5, L. 1971; R.C.M. 1947, 75-7510.

Cross-References
Duty of trustees to provide alternate forms of transportation, 20-10-121.

Reimbursement for supervised home study, 20-10-125, 20-10-142.

20-7-117. Five-year-old schooling and preschool programs. (1) The trustees of an elementary district may establish a program capable of accommodating, at a minimum, all the children in the district who will be 5 years old on or before September 10 of the school year for which the program is to be conducted or have been enrolled by special permission of the board of trustees. The program shall be an integral part of the elementary school and shall be financed and governed accordingly, provided that to be eligible for inclusion in the calculation of ANB pursuant to 20-9-311, a child must have reached the age of 5 on or before September 10 of the school year covered by the calculation or have been enrolled by special permission of the board of trustees.

(2) The trustees of an elementary school district may establish and operate a free preschool program for children between the ages of 3 and 5 years. When such preschool programs are established, they shall be an integral part of the elementary school and shall be governed accordingly. Financing of preschool programs shall not be supported by moneys available from state equalization aid.

History: En. 75-7507 by Sec. 378, Ch. 5, L. 1971; amd. Sec. 3, Ch. 345, L. 1973; R.C.M. 1947, 75-7507; amd. Sec. 3, Ch. 334, L. 1979; amd. Sec. 68, Ch. 370, L. 1987.

Compiler's Comments
1987 Amendment: In (1), in two places, changed "has been enrolled" to "have been enrolled".

Cross-References
Definition of various schools, 20-6-501.
Circumstances under which the regular average number belonging may be increased, 20-9-313.

20-7-118 through 20-7-130 reserved.

20-7-131. Equivalency of completion of secondary education. The superintendent of public instruction shall issue, in accordance with the policies of the board of public education, appropriate documentation certifying that an eligible applicant has satisfied requirements for equivalency of completion of secondary education. Equivalency of completion of secondary education must include satisfactory completion of a testing program or an external diploma program approved by the board of public education.

History: En. Sec. 2, Ch. 94, L. 1983.

Cross-References
Board of Public Education — rules, 20-2-121.

Part 2

Libraries

Part Cross-References
Authority of Superintendent of Public Instruction to employ educational media supervisor, 20-3-104.
Libraries, Title 22, ch. 1.

20-7-201. State visual, aural, and other educational media library. A library of visual, aural, and other educational media shall be established and maintained by the superintendent of public instruction. The media shall be selected by the superintendent of public instruction on the basis of their usefulness as teaching aids and resources for schools and other educational groups within the state and shall be made available to such schools and groups on a rental fee basis. The rental fees for the use of the materials in the library shall be set by the superintendent of public instruction and shall be deposited in the audiovisual and media library account in the state special revenue fund. The superintendent of public instruction may use these funds, as well as any other funds advanced by a legislative appropriation to the audiovisual and media library account, for the operation, maintenance, enlargement, and other related costs of the library.

History: En. 75-7511 by Sec. 382, Ch. 5, L. 1971; amd. Sec. 1, Ch. 193, L. 1974; R.C.M. 1947, 75-7511; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 2, Ch. 470, L. 1987.

Compiler's Comments

1987 Amendment: Near end of third sentence substituted "the audiovisual and media library account in the state special revenue fund" for "a media library enterprise fund" and in fourth sentence substituted "audiovisual and media library account" for "library media enterprise fund".

20-7-202. School library required. The trustees of each district shall establish and maintain a school library in each school of the district. Each school library shall comply with at least the minimum requirements of the standards of accreditation adopted by the board of public education.

History: En. 75-7517 by Sec. 388, Ch. 5, L. 1971; R.C.M. 1947, 75-7517.

Cross-References

Contracts with public library board of trustees, 22-1-309.

20-7-203. Trustees' policies for school library. The trustees shall adopt those policies necessary for regulating the use and operation of school libraries. These policies may provide for the use of school libraries by the residents of the district, provided that such use does not interfere with the regular school use of the library.

History: En. 75-7518 by Sec. 389, Ch. 5, L. 1971; R.C.M. 1947, 75-7518.

20-7-204. School library book selection. School library books shall be selected by the district superintendent or a principal if there is no district superintendent, subject to the approval of the trustees. In districts not employing a superintendent or principal, the trustees shall select the school library books on the basis of recommendations of the county superintendent.

History: En. 75-7519 by Sec. 390, Ch. 5, L. 1971; R.C.M. 1947, 75-7519.

20-7-205. Reporting school library information. The trustees shall report school library information requested by the superintendent of public instruction, by the board of public education, or when there is no district superintendent or principal, by the county superintendent.

History: En. 75-7520 by Sec. 391, Ch. 5, L. 1971; R.C.M. 1947, 75-7520.

Part 3

Vocational and Technical Education

Part Cross-References

"Postsecondary vocational-technical education" defined, 20-1-101.

20-7-301. Duties of the superintendent of public instruction. The superintendent of public instruction shall be the governing agent and executive officer of the state of Montana for K-12 vocational education. The superintendent of public instruction shall adopt and administer policies to effect the orderly development of a system of K-12 vocational education that is adaptable to changing needs, controlled to prevent unnecessary duplication, coordinated with federal guidelines and requirements for vocational education, and funded to ensure growth and quality programming. In order to accomplish the orderly development of a system of K-12 vocational education, the superintendent of public instruction policies shall include:

(1) a state plan for such development;

(2) standards for K-12 vocational education courses and programs;

(3) a review process for the establishment and deletion of programs;

(4) instructor qualifications for K-12 vocational education courses and programs;

(5) criteria for approval of K-12 vocational education courses and programs;

(6) a basis for apportionment of all moneys appropriated by the legislature for K-12 vocational education in accordance with the intent of the legislature as reflected in the terms of the appropriation;

(7) a basis for apportionment of all moneys received by the state of Montana for K-12 vocational education from the federal government in accordance with the acts of congress;

(8) a system of evaluation of K-12 vocational education which allows for consideration of the current and projected manpower needs and job opportunities; and

(9) any other policy not inconsistent with public law and which is necessary for the proper operation of a system of K-12 vocational education.

History: En. 75-7702 by Sec. 405, Ch. 5, L. 1971; (amd. Sec. 1, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 1, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7702; amd. Sec. 1, Ch. 598, L. 1979; amd. Sec. 11, Ch. 658, L. 1987.

Compiler's Comments

1987 Amendment: Throughout section inserted references to "K-12"; deleted former (3), (5), (8), and (12) through (14) relating to postsecondary vocational-technical center certificates to students, Director's qualifications, budget recommendations to the Legislature, tuition and fee charges, allowable building rental costs, and guidelines for authority of a local school district Board of Trustees operating a center; and in (5), at end, deleted "which are to receive financial assistance".

20-7-302. Repealed. Sec. 21, Ch. 598, L. 1979.

History: En. 75-7703 by Sec. 406, Ch. 5, L. 1971; (amd. Sec. 2, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 2, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7703.

20-7-302.1. State director of K-12 vocational education — duties. There is a state director of K-12 vocational education appointed by the superintendent of public instruction. He must:

(1) administer the K-12 vocational education policies adopted by the superintendent of public instruction;

(2) prepare curriculum guides for superintendent of public instruction adoption;

(3) employ, with the confirmation of the superintendent of public instruction, the professional staff necessary for the state supervision and administration of K-12 vocational education;

(4) report the status of K-12 vocational education in the state of Montana when requested by the superintendent of public instruction;

(5) keep all K-12 vocational education records in his office;

(6) provide K-12 vocational education supervisory and consultative assistance to districts;

(7) prepare any necessary reports for the superintendent of public instruction or the legislature; and

(8) perform any other duty assigned by the superintendent of public instruction.

History: En. Sec. 2, Ch. 598, L. 1979; amd. Sec. 12, Ch. 658, L. 1987.

Compiler's Comments

1987 Amendment: Throughout section inserted references to "K-12"; and deleted former (7) through (10) and (12) through (15) that read: "(7) provide a postsecondary vocational-technical center system policy and procedural handbook for institutional operations that will standardize operations among the centers;

(8) identify and direct the county treasurer in those counties where postsecondary vocational-technical centers are located to establish the necessary multifund structures for postsecondary vocational-technical center financial operations;

(9) meet with the chairman of the board of trustees, district superintendent, and center director of each postsecondary vocational-technical center at least twice each year to discuss recommended changes in the superintendent of public instruction's policies and procedures;

(10) formulate and put into effect uniform fiscal, student, staff, and program accounting systems for the postsecondary vocational-technical centers;

(12) represent the postsecondary vocational-technical center system to state agencies, associations, and others when appropriate;

(13) recommend a staffing pattern for the postsecondary vocational-technical centers;

(14) provide for the evaluation of programs and services within each postsecondary vocational-technical center;

(15) provide for evaluation of each postsecondary vocational-technical center's ability to meet employment and student vocational-technical education needs".

20-7-303. Authorization to establish and maintain vocational education courses and programs. The trustees of an elementary or high school district may establish and maintain a vocational education course or program that complies with the K-12 vocational education standards adopted by the superintendent of public instruction. In order for a course or program to be eligible for state or federal financing, it shall be approved by the superintendent of public instruction for compliance with K-12 vocational education standards.

History: En. 75-7704 by Sec. 407, Ch. 5, L. 1971; (amd. Sec. 5, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 5, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7704; amd. Sec. 13, Ch. 598, L. 1979; amd. Sec. 13, Ch. 658, L. 1987.

Compiler's Comments

1987 Amendment: Near beginning substituted "an elementary or high school district" for "any district, community college district, or unit of the Montana university system", near middle inserted "K-12", and at end inserted "for compliance with K-12 vocational education standards".

Cross-References

Powers and duties of community college trustees, 20-15-225.

20-7-304. Repealed. Sec. 31, Ch. 658, L. 1987.

History: En. Sec. 7, Ch. 598, L. 1979.

20-7-305. Funding for secondary vocational education and industrial arts programs — application — rules. (1) The superintendent of public instruction shall annually distribute money from the biennial appropriation for secondary vocational education and industrial arts. The money shall be allocated to high school districts providing approved secondary vocational education and industrial arts programs in accordance with this section and 20-7-306.

(2) A high school district providing secondary vocational education and industrial arts programs must apply to the superintendent of public instruction for funds available under this section and 20-7-306. The superintendent of public instruction shall by rule prescribe the method for ANB determination, the form of the application, budget procedures, and accounting rules for the funds. The superintendent of public instruction may prescribe other requirements for the receipt of funding not inconsistent with Title 20, chapter 7, part 3.

(3) A secondary vocational education or industrial arts program or a course in such a program in a high school district may not be funded until that program or course has been offered by the school district for 1 school year.

(4) As used in this section and 20-7-306 the term "school district" means a district organized for the purpose of providing educational services for grades 9 through 12, but the term does not include postsecondary vocational education centers.

History: En. Sec. 1, Ch. 287, L. 1981.

Cross-References

ANB defined, 20-1-101.

Definition of elementary and high school districts, 20-6-101.

Definition of various schools, 20-6-501.

Calculation of average number belonging, 20-9-311.

20-7-306. Distribution of secondary vocational education and industrial arts funds. (1) The superintendent of public instruction shall categorize secondary vocational programs into one of five weighted categories based upon the relative additional costs of those programs.

(2) The superintendent of public instruction shall determine the weighted category to be assigned industrial arts programs.

(3) The superintendent of public instruction shall adjust the weighted categories as necessary to assure that the procedures outlined in subsections (4) and (5) do not result in entitlements that exceed the amount appropriated.

(4) Funding shall be based upon the average number belonging (ANB) to secondary vocational education and industrial arts programs of the high school district in the year immediately preceding the year for which funding is requested. The ANB shall be computed for each separate secondary vocational education and industrial arts program.

(5) For secondary vocational education programs the ANB generated for each category established in subsection (1) shall be multiplied by the factor for that category, and the product thereof shall be multiplied by the applicable ANB dollar value established by 20-9-319. Industrial arts programs shall be funded at 50% of the category assigned. The high school district is entitled to receive for secondary vocational education and industrial arts, the total of all secondary vocational education and industrial arts categories so computed.

(6) The superintendent of public instruction shall annually distribute the funds allocated in this section by November 1. The money so received by the high school district must be deposited into the subfund of the miscellaneous programs fund established by 20-9-507 and shall be expended only for approved secondary vocational education and industrial arts programs. The

expenditure of the money so received shall be reported in the annual trustees' report as required by 20-9-213.

History: **En. Sec. 2, Ch. 287, L. 1981.**

Cross-References

Calculation of average number belonging, 20-9-311.

20-7-307 through 20-7-310 reserved.

20-7-311. Renumbered 20-16-106. Sec. 33, Ch. 658, L. 1987.

20-7-312. Renumbered 20-16-104. Sec. 33, Ch. 658, L. 1987.

20-7-313. Repealed. Sec. 31, Ch. 658, L. 1987.

History: **En. 75-7711 by Sec. 414, Ch. 5, L. 1971; R.C.M. 1947, 75-7711.**

20-7-314. Renumbered 20-16-108. Sec. 33, Ch. 658, L. 1987.

20-7-315 through 20-7-320 reserved.

20-7-321. Acceptance of acts of congress for vocational education. The state of Montana hereby reaffirms the acceptance of and assents to the terms and provisions of the act of congress entitled the "Vocational Education Act of 1963" and the "Vocational Education Amendments of 1968" and further hereby accepts and assents to the terms and provisions of all acts of the congress amendatory of the "Vocational Education Act of 1963" and to the terms and provisions of all other acts of congress which provide funds for the benefit of vocational education in Montana.

History: **En. 75-7705 by Sec. 408, Ch. 5, L. 1971; R.C.M. 1947, 75-7705.**

20-7-322. Renumbered 20-16-201. Sec. 33, Ch. 658, L. 1987.

20-7-323. Repealed. Sec. 31, Ch. 658, L. 1987.

History: **En. 75-7708 by Sec. 411, Ch. 5, L. 1971; (amd. Sec. 9, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 9, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7708; amd. Sec. 17, Ch. 598, L. 1979.**

20-7-324. Renumbered 20-16-202. Sec. 33, Ch. 658, L. 1987.

20-7-325. Renumbered 20-16-204. Sec. 33, Ch. 658, L. 1987.

20-7-326. Repealed. Sec. 31, Ch. 658, L. 1987.

History: **En. Sec. 5, Ch. 598, L. 1979; amd. Sec. 1, Ch. 161, L. 1983.**

20-7-327. Renumbered 20-16-203. Sec. 33, Ch. 658, L. 1987.

20-7-328 through 20-7-330 reserved.

20-7-331. Repealed. Sec. 31, Ch. 658, L. 1987.

History: **En. 75-7712 by Sec. 415, Ch. 5, L. 1971; (amd. Sec. 12, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 12, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7712.**

20-7-332. Renumbered 20-16-205. Sec. 33, Ch. 658, L. 1987.

20-7-333. Renumbered 20-16-206. Sec. 33, Ch. 658, L. 1987.

Part 4

Special Education for Exceptional Children

Part Cross-References

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

Attendance of pupils at schools, Title 20, ch. 5, part 1.

Rights of the handicapped, Title 49, ch. 4.

Developmentally disabled, Title 53, ch. 20.

20-7-401. Definitions. In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Appropriate public education" means the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped are met.

(2) "Deaf" means a hearing impairment which is so severe that the child's hearing is nonfunctional for the purpose of educational performance.

(3) "Deaf/blind" means concomitant hearing and visual impairments, the combination of which causes such severe educational problems for the child so impaired that the child cannot be accommodated in a special education program designed solely for deaf or blind children.

(4) "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time that adversely affects educational performance: an inability to learn which cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes a child who is schizophrenic. The term does not include a child who is socially maladjusted, unless it is determined that the child is emotionally disturbed.

(5) "Handicapped child" means a child evaluated as being mentally retarded, hard-of-hearing, deaf, speech-impaired, visually handicapped, emotionally disturbed, deaf/blind, multihandicapped, orthopedically impaired, other health-impaired, or as having specific learning disabilities, who because of those impairments needs special education and related services. A child who is 5 years of age or younger may be identified as handicapped without the handicapping condition being specified.

(6) "Hard-of-hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included within the definition of deaf.

(7) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(8) "Multihandicapped" means concomitant impairments (e.g., mentally retarded/blind or mentally retarded/orthopedically impaired), the combination of which causes such severe educational problems for the child so impaired that the child cannot be accommodated in a special education program designed solely for one of the impairments. The term does not include deaf/blind children.

(9) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., fractures or burns which cause contractures, amputation, cerebral palsy).

(10) "Other health-impaired" means:

(a) having an autistic condition that is manifested by severe communication and other developmental and educational problems; or

(b) having limited strength, vitality, or alertness due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle-cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes.

(11) "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education and includes speech pathology, audiology, occupational therapy, and physical therapy.

(12) "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a handicapped child, including but not limited to classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(13) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes but is not limited to such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps; mental retardation; or environmental, cultural, or economic disadvantages.

(14) "Speech/language impaired" means a communication disorder such as stuttering, impaired articulation, or a language or voice impairment which adversely affects a child's interpersonal relationships or educational performance.

(15) "Surrogate parent" means an individual appointed to safeguard a child's rights and protect the child's interests in educational evaluation, placement, and hearing or appeal procedures concerning the child.

(16) "Visually handicapped" means a visual impairment which, after correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.

History: En. 75-7801 by Sec. 419, Ch. 5, L. 1971; amd. Sec. 1, Ch. 93, L. 1974; amd. Sec. 27, Ch. 266, L. 1977; amd. Sec. 1, Ch. 539, L. 1977; R.C.M. 1947, 75-7801; amd. Sec. 1, Ch. 311, L. 1981; amd. Sec. 1, Ch. 461, L. 1983; amd. Sec. 1, Ch. 560, L. 1985; amd. Sec. 1, Ch. 618, L. 1985.

20-7-402. Special education to comply with board policies. (1) The conduct of special education programs shall comply with the policies recommended by the superintendent of public instruction and adopted by the board of public education. These policies shall assure and include but are not limited to:

(a) placement of handicapped children in the least restrictive alternative setting;

(b) due process for all handicapped children, including the appointment of a surrogate parent if necessary;

(c) use of child study teams to identify handicapped children and use of instructional teams to plan individual education programs;

(d) comprehensive evaluation for each handicapped child; and

(e) other policies needed to assure a free and appropriate public education.

(2) The superintendent of public instruction shall promulgate rules to administer the policies of the board of public education.

History: En. 75-7802 by Sec. 420, Ch. 5, L. 1971; amd. Sec. 2, Ch. 539, L. 1977; R.C.M. 1947, 75-7802; amd. Sec. 2, Ch. 618, L. 1985.

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

20-7-403. Duties of superintendent of public instruction. The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

(1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;

(2) administering the policies adopted by the board of public education;

(3) certifying special education teachers on the basis of the special qualifications for such teachers as prescribed by the board of public education;

(4) establishing procedures to be used by school district personnel in identifying handicapped children;

(5) recommending to districts the type of special education class or program needed to serve the handicapped children of the districts and preparing appropriate guides for developing individual education programs;

(6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in diagnosing the special education needs of children, in planning programs, and in admitting and discharging children from such programs;

(7) assisting local school districts, institutions, and other agencies in developing full-service programs for all handicapped children;

(8) approving, as they are proposed and annually thereafter, those special education classes or programs which comply with the laws of the state of Montana, policies of the board of public education, and the regulations of the superintendent of public instruction;

(9) providing technical assistance to district superintendents, principals, teachers, and trustees;

(10) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;

(11) preparing appropriate training and instructional material for persons appointed as surrogate parents that outlines their duties toward the child,

limitations on what they may do for the child, duties in relation to the child's records, sources of assistance available to the surrogate parent, and the need to seek competent legal assistance in implementing hearing or appeal procedures;

(12) acting as the coordinating agency with federal agencies, other state agencies, political subdivisions of the state, and private bodies on matters concerning special education, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education;

(13) administering regional special education services for children in need of special education in accordance with policies of the board of public education; and

(14) contracting for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education.

History: En. 75-7803 by Sec. 421, Ch. 5, L. 1971; amd. Sec. 1, Ch. 174, L. 1975; amd. Sec. 3, Ch. 539, L. 1977; R.C.M. 1947, 75-7803; amd. Sec. 1, Ch. 204, L. 1979; amd. Sec. 1, Ch. 434, L. 1981; amd. Sec. 3, Ch. 618, L. 1985.

Cross-References

Special education supervisor employed by Superintendent of Public Instruction, 20-3-103.

Board of Public Education policies, 20-4-102.

Issuance of teacher or specialist certificates, 20-4-103.

Classifications of teacher and specialist certificates, 20-4-106.

20-7-404. Cooperation of state agencies. The state department of health, the department of family services, and the state school for the deaf and blind shall cooperate with the superintendent of public instruction in assisting school districts in discovering children in need of special education. Nothing herein shall be construed to interfere with the purpose and function of these state agencies.

History: En. 75-7804 by Sec. 422, Ch. 5, L. 1971; amd. Sec. 5, Ch. 539, L. 1977; R.C.M. 1947, 75-7804; amd. Sec. 23, Ch. 609, L. 1987.

Compiler's Comments

1987 Amendment: Near beginning deleted references to Department of Institutions and Department of Social and Rehabilitation Services and inserted reference to Department of Family Services.

20-7-405 through 20-7-410 reserved.

20-7-411. Regular classes preferred — obligation to establish special education program. (1) All handicapped children in Montana are entitled to a free appropriate public education provided in the least restrictive alternative setting. To the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, shall be educated with children who are not handicapped. Separate schooling or other removal of handicapped children from the regular educational environment may occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) After September 1, 1977, the board of trustees of every school district must provide or establish and maintain a special education program for every handicapped person as herein defined between the ages of 6 and 18, inclusive.

(3) On or before September 1, 1990, the board of trustees of each elementary district shall provide or establish and maintain a special education program for each handicapped preschool child between the ages of 3 and 6, inclusive.

(4) The board of trustees of any school district may meet its obligation to serve handicapped persons by establishing its own special education program, by establishing a cooperative special education program, or by participating in a regional services program.

History: En. 75-7805 by Sec. 423, Ch. 5, L. 1971; amd. Sec. 1, Ch. 123, L. 1971; amd. Sec. 2, Ch. 93, L. 1974; amd. Sec. 6, Ch. 539, L. 1977; R.C.M. 1947, 75-7805; amd. Sec. 3, Ch. 558, L. 1979; amd. Sec. 1, Ch. 258, L. 1987.

Compiler's Comments

1987 Amendment: Inserted (3).

Implementation Contingency: Section 3, Ch. 258, L. 1987, provided: "A board of trustees of a school district is not required to implement this act if the federal government does not appropriate at least one-half of the authorized amount for each qualifying handicapped preschool child for school fiscal year 1991 and beyond."

Cross-References

Educational goals and duties, Art. X, sec. 1, Mont. Const.

20-7-412. Establishment of individual district special education program. (1) The trustees of any district, upon obtaining the approval of the superintendent of public instruction, shall establish and maintain a special education program whenever, in the judgment of the trustees and the superintendent of public instruction:

(a) there are sufficient numbers of handicapped children in the district to justify the establishment of a program; or

(b) an individual child requires special education services such as home or hospital tutoring, school-to-home telephone communication, or other individual programs.

(2) Programs may be established for handicapped persons between the ages of 0 and 21 when the superintendent of public instruction and the trustees have determined that such programs will:

(a) assist a person to achieve levels of competence that will enable him to participate in the regular instruction of the district when he could not participate without special education;

(b) permit the conservation or early acquisition of skills which will provide the person with an equal opportunity to participate in the regular instruction of the district; or

(c) provide other demonstrated educational advantages which will materially benefit the person.

(3) Approval and operation of programs established pursuant to subsection (2) do not obligate the state or a school district to offer regular educational programs to a similar age group unless specifically provided by law.

(4) When an agency which has responsibility for a handicapped person over 21 but not more than 25, inclusive, cannot provide appropriate services to that person, the agency may contract with the local school district to provide such services.

History: En. 75-7806 by Sec. 424, Ch. 5, L. 1971; amd. Sec. 1, Ch. 122, L. 1971; amd. Sec. 2, Ch. 123, L. 1971; amd. Sec. 3, Ch. 93, L. 1974; amd. Sec. 7, Ch. 539, L. 1977; R.C.M. 1947, 75-7806; amd. Sec. 4, Ch. 558, L. 1979.

20-7-413. Petition of parents for establishment of special education program. The parents of persons requiring special education may petition the board of trustees to establish an individual district special education program. Parents residing in several districts may petition the board of trustees of each district to cooperatively establish a special education program. The interlocal cooperative agreement authorized in Title 7, chapter 11, part 1 may be used to establish a multidistrict special education program.

History: En. 75-7807 by Sec. 425, Ch. 5, L. 1971; amd. Sec. 3, Ch. 123, L. 1971; amd. Sec. 4, Ch. 93, L. 1974; amd. Sec. 8, Ch. 539, L. 1977; R.C.M. 1947, 75-7807.

20-7-414. Determination of children in need and type of special education needed — approval of classes and programs by superintendent. (1) The determination of the children requiring special education and the type of special education needed by these children shall be the responsibility of the trustees, and such determination shall be made in compliance with the procedures established in the rules of the superintendent of public instruction. Whenever the trustees of a school district or the governing authority of an institution learn of a handicapped child in their jurisdiction who is in need of special education, they shall determine whether the child is in need of a surrogate parent by determining whether the parents or guardian is unknown or unavailable or if the child is a ward of the state. The determination must be made within 10 days of the date on which the trustees of a school district or the governing authority of an institution learned of the presence of the child in the district. If the child is in need of a surrogate parent, the trustees of a school district or the governing authority of an institution must nominate a surrogate parent for the child as provided in 20-7-461.

(2) Whenever the trustees of any district intend to establish a special education class or program, they shall apply for approval and funding of the class or program by the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the application for the special education class or program on the basis of its compliance with the laws of the state of Montana, the special education policies adopted by the board of public education, and the rules of the superintendent of public instruction. No special education class may be operated by the trustees without the approval of the superintendent of public instruction. Each special education class or program must be approved annually to be funded as part of the maximum-budget-without-a-vote for special education.

History: En. 75-7811 by Sec. 429, Ch. 5, L. 1971; amd. Sec. 12, Ch. 539, L. 1977; R.C.M. 1947, 75-7811; amd. Sec. 4, Ch. 618, L. 1985.

Cross-References

Guardians of minors, Title 72, ch. 5, part 2.

20-7-415. Regional special education services — funding — expiration date. (1) There is established a regional special education services program to provide special education services to handicapped children who cannot efficiently be served by a program operated by an individual school district or by several cooperating school districts. Regional special education services shall be limited to:

(a) providing direct services to handicapped children who are not adequately served by a district program;

(b) initiating special services for handicapped children as a service model which may then be continued as an individual district or cooperative district program;

(c) coordinating and conducting in-service training for special education and local district personnel in the region; and

(d) assisting local districts in the region in the development and expansion of individual district or cooperative district programs.

(2) Funds for such services shall be appropriated to the superintendent of public instruction from state equalization funds and shall be available to support regional special education programs and services. Such funds may be supplemented by appropriate federal funds. The authorization for regional special education services for children expires on June 30, 1980.

History: En. 75-7817 by Sec. 4, Ch. 539, L. 1977; R.C.M. 1947, 75-7817.

Cross-References

Pupil-instruction-related days, 20-1-304.

20-7-416 through 20-7-419 reserved.

20-7-420. Residency requirements for financial responsibility for special education. (1) In accordance with the provisions of 1-1-215, a child's district of residence for special education purposes is the residence of his parents or of his guardian unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last known district of residence is the child's district of residence.

(2) The district of residence is financially responsible for tuition as established under 20-5-305 and 20-5-312 for special education students.

History: En. Sec. 1, Ch. 470, L. 1979.

20-7-421. Arranging attendance in another district in lieu of a special education program — tuition. (1) With the approval of the superintendent of public instruction, the trustees may arrange for the attendance of a child in need of special education in a special education program in another district within the state of Montana.

(2) Tuition as required under 20-5-305 and 20-5-312 may be charged as provided in 20-7-420.

History: En. 75-7808 by Sec. 426, Ch. 5, L. 1971; amd. Sec. 1, Ch. 140, L. 1975; amd. Sec. 9, Ch. 539, L. 1977; R.C.M. 1947, 75-7808; amd. Sec. 2, Ch. 470, L. 1979; amd. Sec. 2, Ch. 481, L. 1979; amd. Sec. 2, Ch. 661, L. 1979.

20-7-422. Out-of-state tuition for special education children. (1) If the trustees of any district recommend to the superintendent of public instruction the attendance of a child in need of special education in a special education program offered outside of the state of Montana, such arrangements shall not be subject to the out-of-state attendance provisions of the laws governing the attendance of pupils in schools outside the state of Montana.

(2) Whenever the attendance of a child at an out-of-state special education program is approved by the superintendent of public instruction, it shall be the responsibility of the superintendent of public instruction, in cooperation with the department of family services, to negotiate the program for the child and the amount and manner of payment of tuition. The amount of

tuition shall be included as a contracted service in 20-7-431(1)(a)(iii)(A) in the maximum-budget-without-a-vote for special education.

History: En. 75-7809 by Sec. 427, Ch. 5, L. 1971; amd. Sec. 2, Ch. 140, L. 1975; amd. Sec. 10, Ch. 539, L. 1977; R.C.M. 1947, 75-7809; amd. Sec. 3, Ch. 661, L. 1979; amd. Sec. 24, Ch. 609, L. 1987.

Compiler's Comments

1987 Amendment: In middle of (2) deleted references to Department of Social and Rehabilitation Services and Department of Institutions and inserted reference to Department of Family Services.

20-7-423. Arranging attendance in a private institution. Whenever the trustees determine that a handicapped child is in need of services that can only be provided by a private institution and the superintendent of public instruction so approves, the board of trustees may negotiate the amount and manner of payment of tuition and it shall be included as a contracted service as allowed in 20-7-431(1)(a)(iii)(A).

History: En. 75-7809.1 by Sec. 11, Ch. 539, L. 1977; R.C.M. 1947, 75-7809.1; amd. Sec. 4, Ch. 661, L. 1979.

20-7-424. No tuition when attending a state institution. When a child is attending an institution supported solely by funds of the state of Montana, the resident district or county shall not be required to pay tuition to the state institution for such child, but whenever at the recommendation of institution officials such child attends classes conducted by a school within a local district, the district or county, whichever is applicable, wherein the parents or guardian of the child maintain legal residence shall pay tuition to the district or county operating the school in accordance with the provisions of 20-5-305 or 20-7-421, whichever section applies to the circumstances of the child. Transportation payments shall be made for students enrolled in such classes or receiving training, including summer sessions, at the state institution. The schedule of transportation payments shall be approved in accordance with existing special education transportation payment schedules and shall be approved by the county transportation committee and the superintendent of public instruction.

History: En. 75-7810 by Sec. 428, Ch. 5, L. 1971; amd. Sec. 1, Ch. 282, L. 1971; amd. Sec. 1, Ch. 45, L. 1973; amd. Sec. 7, Ch. 91, L. 1973; R.C.M. 1947, 75-7810.

Cross-References

Duty of trustees to provide transportation, 20-10-121.

20-7-425 through 20-7-430 reserved.

20-7-431. Allowable cost schedule for special programs — superintendent to make rules — annual accounting. (1) For the purpose of determining the maximum-budget-without-a-vote for special education as defined in 20-9-321, the following schedule of allowable costs shall be followed by the school district in preparation of its special education budget for state aid request purposes and by the superintendent of public instruction in his review and approval of the budget (for the purposes of determining the amount of the maximum-budget-without-a-vote for special education for the district, and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in accordance with 20-9-311 and 20-9-313):

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses including:

(i) salaries and benefits of special program teachers, regular program teachers, teacher aides, special education supervisors, audiologists, and speech and hearing clinicians—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(ii) teaching supplies and textbooks if used exclusively for special programs—the actual total cost;

(iii) other expenses:

(A) contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies—the actual total cost;

(B) transportation costs for special education personnel who must travel on an itinerant basis from school to school or district to district or to in-state child study team meetings or in-state individualized education program meetings—the actual cost to the district calculated on the same mileage rate used by the district for other travel reimbursement purposes;

(b) supportive services, including:

(i) salaries and benefits of professional supportive personnel—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program. Professional supportive personnel may include counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) salaries and benefits of clerical personnel for professional personnel in supportive services—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(c) equipment:

(i) equipment—the actual total cost;

(ii) special equipment for district-owned school buses necessary to accommodate special students—the actual total cost;

(iii) special equipment for school buses contracted to transport special students—that portion of the contract price attributable to the cost of special equipment or personnel required to accommodate special students—the actual special cost;

(iv) repair and maintenance of equipment—the actual total cost;

(d) room and board costs when the special pupil has to attend a program at such a distance from his home that commuting is undesirable as determined by the superintendent of public instruction.

(2) The superintendent of public instruction shall, prior to September 1, 1977, revise the rules in accordance with the policies of the board of public education for:

(a) keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs;

(b) defining the total special program caseload that shall be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)(b) of this section; and

(c) defining the kinds or types of equipment whose costs may be counted under subsection (1)(c)(i) of this section.

(3) An annual accounting of all expenditures of school district general fund moneys for special education shall be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for such accounting.

(4) If a board of trustees chooses to exceed the budget approved by the superintendent of public instruction, costs in excess of the approved budget may not be reimbursed under the maximum-budget-without-a-vote for special education.

(5) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, the federal social security system, or the costs for unemployment compensation insurance.

(6) (a) Notwithstanding other provisions of the law, the superintendent of public instruction shall not approve a maximum-budget-without-a-vote for special education which exceeds legislative appropriations; however, any unexpended balance from the first year of a biennial appropriation may be spent in the second year of the biennium in addition to the second year appropriation.

(b) If the total allowable cost of the special education budgets exceeds legislative appropriations available for special education, each district shall receive a pro rata share of the available appropriations based upon prioritized budget items as established by the superintendent of public instruction. The amount of the approved budgets in excess of the available appropriations may not be reimbursed under the maximum-budget-without-a-vote for special education and is the responsibility of the school district.

History: En. 75-7813.1 by Sec. 1, Ch. 344, L. 1974; amd. Sec. 13, Ch. 539, L. 1977; R.C.M. 1947, 75-7813.1; amd. Sec. 1, Ch. 481, L. 1979; amd. Sec. 1, Ch. 661, L. 1979; amd. Sec. 1, Ch. 166, L. 1981; amd. Sec. 1, Ch. 548, L. 1983; amd. Sec. 1, Ch. 376, L. 1985; amd. Sec. 1, Ch. 243, L. 1987.

Compiler's Comments

1987 Amendment: Inserted (1)(c)(iv).

Cross-References

Limit on expenditures, 17-8-103.
Financing special education, 20-9-303.

20-7-432 through 20-7-440 reserved.

20-7-441. Special education child eligibility for transportation. With the approval of the superintendent of public instruction, any special education child shall be eligible for transportation, which shall be provided by the resident district, when he is enrolled:

(1) in a special education class or program operated by the district of such child's residence;

(2) in a special education class or program operated by a Montana district other than the child's resident district;

(3) under an approved tuition agreement in a special education class or program operated outside of the state of Montana; or

(4) under an approved tuition agreement in a private institution.

History: **En. 75-7814 by Sec. 432, Ch. 5, L. 1971; amd. Sec. 14, Ch. 539, L. 1977; R.C.M. 1947, 75-7814.**

Cross-References

Duty of trustees to provide transportation, 20-10-121.

20-7-442. State transportation reimbursement for special education children. Districts providing children with transportation to a special education class or program and complying with the special education transportation regulations promulgated by the superintendent of public instruction shall be eligible for a transportation reimbursement. The reimbursement shall be calculated from a schedule established by the superintendent of public instruction with the state providing two-thirds of the reimbursement and the county in which the children reside providing the remainder.

History: **En. 75-7815 by Sec. 433, Ch. 5, L. 1971; R.C.M. 1947, 75-7815.**

Cross-References

State transportation reimbursement, 20-10-145.

20-7-443. Financial assistance for under-six-year-old special education class or program. Any district operating an approved special education class or program for children under the age of 6 years shall be eligible for financial assistance in accordance with 20-7-431 and for transportation reimbursement under 20-7-442.

History: **En. 75-7816 by Sec. 434, Ch. 5, L. 1971; amd. Sec. 2, Ch. 122, L. 1971; amd. Sec. 15, Ch. 539, L. 1977; R.C.M. 1947, 75-7816.**

Cross-References

Maximum general fund budget for special education, 20-9-321.

Computation of revenues and net tax levy requirements for the transportation fund budget, 20-10-144.

County transportation reimbursement, 20-10-146.

20-7-444 through 20-7-450 reserved.

20-7-451. Authorization to create full service special education cooperatives — special funding provisions. (1) A school district may contract with one or more other school districts to establish a cooperative to perform all special education administrative services, activities, and undertakings that the school district entering into the contract is authorized by law to perform. The cooperative contract must be authorized by the boards of trustees of the districts entering into the contract.

(2) A cooperative contract may allow money allocated to a cooperative to be expended for:

(a) recruitment of professionals or employees for the cooperative; and

(b) facility rental and supportive services including but not limited to janitorial and communication services.

(3) The superintendent of public instruction may pay directly to a cooperative the approved allowable costs for contracted special education services from the state special revenue fund for state equalization aid as provided in 20-9-343. The total of such payments must be within the limit set by the legislature for approved special education budgets.

History: **En. Sec. 1, Ch. 471, L. 1979; amd. Sec. 1, Ch. 156, L. 1985.**

Cross-References

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

Trustees to execute all contracts in name of school district, 20-9-213.

Educational cooperative agreements, Title 20, ch. 9, part 7.

20-7-452. Detailed contents of full service special education cooperative contracts. The contract authorized in 20-7-451 may include all necessary and proper matters but must specify the following:

(1) its duration;

(2) the precise organization, composition, and nature of the cooperative;

(3) the purpose of the cooperative;

(4) the manner of financing the cooperative and establishing and maintaining a budget therefor;

(5) the permissible method to be employed in accomplishing the partial or complete termination of the cooperative agreement and for disposing of property upon partial or complete termination;

(6) provision for an administrator or a joint board responsible for administering the cooperative, including representation of the contracting districts on the joint board;

(7) the manner of acquiring, holding, and disposing of real and personal property used by the cooperative;

(8) any other necessary and proper matters.

History: En. Sec. 2, Ch. 471, L. 1979.

Cross-References

School property, Title 20, ch. 6, part 6.

Contracts, Title 28, ch. 2.

20-7-453. Submission of agreement to attorney general. (1) Every contract made under the provisions of 20-7-451 through 20-7-456 must, as a condition precedent to its performance, be submitted to the attorney general who must determine whether the contract is in proper form and compatible with the laws of Montana.

(2) The attorney general must approve any contract submitted to him pursuant to 20-7-451 unless he finds that it does not meet the conditions set forth in 20-7-451 and 20-7-452, in which case he must detail, in writing addressed to the school districts concerned, the specific respects in which the proposed contract fails to meet the requirements of law. Failure to disapprove a contract within 30 days of its submission constitutes approval of the contract by the attorney general.

History: En. Sec. 3, Ch. 471, L. 1979.

20-7-454. Final approval and filing of special education cooperative contract. Within 10 days after approval by the attorney general and prior to commencement of its performance, a full service special education cooperative contract made pursuant to 20-7-451 through 20-7-456 must be:

(1) submitted to the superintendent of public instruction who has final approval authority pursuant to the policies of the board of public education;

(2) filed with the county clerk and recorder of the county or counties in which the school districts involved are located; and

(3) filed with the secretary of state.

History: En. Sec. 4, Ch. 471, L. 1979.

Cross-References

Filing fees of Secretary of State, 2-6-103.

Fees of County Clerk, 7-4-2631.

20-7-455. Authorization to appropriate funds for purpose of full service special education cooperative contract. A school district entering into a full service special education cooperative contract pursuant to 20-7-451 through 20-7-456 may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative officer or joint board created for the purpose of performance of the cooperative contract such material, personnel, or services as may be within its legal power to furnish.

History: En. Sec. 5, Ch. 471, L. 1979.

Cross-References

School property, Title 20, ch. 6, part 6.

20-7-456. Tenure of teachers employed by cooperatives. (1) Teachers who have tenure rights with a district and are employed by a cooperative of which their district is a member do not lose their tenure with the district.

(2) Nontenured teachers employed by a cooperative acquire tenure with a cooperative in the same manner as prescribed in 20-4-203, and the provisions of 20-4-204 through 20-4-207 are applicable to teachers employed by a cooperative.

(3) Tenure for a teacher employed by a cooperative is acquired only with the cooperative and not with a member school district of a cooperative.

(4) For the purposes of tenure of a teacher employed by a cooperative, special education cooperative contract renewals may not be used to limit the teacher's progress toward tenure status.

History: En. Sec. 6, Ch. 471, L. 1979.

Cross-References

Teacher tenure, 20-4-203.

20-7-457 through 20-7-460 reserved.

20-7-461. Appointment of surrogate parent. (1) Any person may advise the trustees of a school district or the governing authority of an institution of a handicapped child within the district who may be in need of a surrogate parent. The trustees of a school district or the governing authority of an institution must determine whether the child is in need of a surrogate parent as provided in 20-7-414. If the trustees of a school district or the governing authority of an institution determine that the child is in need of a surrogate parent, they shall nominate a surrogate parent for the child within 30 days of that determination.

(2) The person nominated as a surrogate parent must be an adult who is not an employee of a state or local educational agency. The surrogate parent may not have a vested interest that will conflict with his representation and protection of the child. The surrogate, whenever practicable, must be knowledgeable about the educational system, special education requirements, and the legal rights of the child in relation to the educational system. Whenever practicable, the surrogate parent must be familiar with the cultural or language background of the child.

(3) The nomination for appointment of a surrogate parent, along with all necessary supporting documents, must be submitted to the youth court for official appointment of the surrogate parent by the court. If the court does

not appoint the nominee, the trustees of a school district or the governing authority of an institution must make another nomination under this section.

History: **En. Sec. 5, Ch. 618, L. 1985.**

Cross-References

Youth Court Act, Title 41, ch. 5.

20-7-462. Responsibilities of surrogate parent. A person assigned as a surrogate parent shall represent the handicapped child in all decisionmaking processes concerning the child's education by:

(1) becoming thoroughly acquainted with the child's history and other information contained in school and other pertinent files, records, and reports relating to that child's educational needs;

(2) complying with state and federal law as to the confidentiality of all records and information to which he is privy pertaining to that child and using discretion in the necessary sharing of the information with appropriate people for the purpose of furthering the interests of the child;

(3) becoming familiar with the educational evaluation and placement for the child and by giving his approval or disapproval for the evaluation and placement and reviewing and evaluating special education programs pertaining to the child and such other programs as may be available; and

(4) initiating any mediation, hearing, or appeal procedures necessary and seeking qualified legal assistance whenever such assistance is in the best interest of the child.

History: **En. Sec. 6, Ch. 618, L. 1985.**

20-7-463. Surrogate parent — immunity from liability — reimbursement. (1) A person appointed as a surrogate parent is exempt from liability for any act or omission performed by him in his capacity as a surrogate parent except an act or omission which is found to have been committed in a grossly negligent or malicious manner.

(2) A surrogate parent has the same protection and immunity in professional communications as a teacher.

(3) A surrogate parent must be reimbursed by the school district for all reasonable and necessary expenses incurred in the pursuit of his duties, as prescribed by rules adopted by the superintendent of public instruction.

History: **En. Sec. 7, Ch. 618, L. 1985.**

Part 5

Traffic Education

Part Cross-References

National defense highway plans and drivers' training, 10-3-107.

School safety patrols, 20-1-408.

Highway traffic safety administration, 61-2-103.

Licensure of 15-year-olds upon completion of driver's education, 61-5-105.

Instruction and traffic education permits and temporary licenses, 61-5-106.

Traffic regulation, Title 61, ch. 8.

Violation of safety patrol signals, 61-8-502.

20-7-501. Definitions. As used in this title, unless the context clearly indicates otherwise the following definitions apply:

(1) "Traffic education" means instruction in the motor vehicle laws, in the acceptance of personal responsibility on the public highways, in the causes

and consequences of traffic accidents, and in the skills necessary for the safe operation of motor vehicles.

(2) "Traffic education course" means a course of traffic education which has been approved by the superintendent of public instruction.

(3) "Teacher of traffic education" means an instructor approved by the superintendent of public instruction to teach traffic education.

(4) "Traffic education account" means the state treasury account in the state special revenue fund for the deposit and disbursement of state traffic education revenue.

History: En. 75-7901 by Sec. 435, Ch. 5, L. 1971; R.C.M. 1947, 75-7901; amd. Sec. 1, Ch. 277, L. 1983.

20-7-502. Duties of superintendent of public instruction. The superintendent of public instruction shall:

(1) develop, administer, and supervise the program of instruction in traffic education;

(2) establish basic course requirements in classroom instruction and behind-the-wheel instruction for traffic education;

(3) establish the classroom instruction and the behind-the-wheel instruction qualifications for a teacher of traffic education;

(4) approve teachers of traffic education when such teachers are qualified;

(5) establish criteria for traffic education course approval based on the basic course requirements, teacher of traffic education qualifications, and the requirements of law;

(6) approve traffic education courses when such courses meet the criteria for approval;

(7) promulgate a policy for the distribution of the traffic education moneys to approved traffic education courses and annually order the distribution of the proceeds of the traffic education account in the manner required by law; and

(8) assist districts with the conduct of traffic education.

History: En. 75-7904 by Sec. 438, Ch. 5, L. 1971; R.C.M. 1947, 75-7904.

20-7-503. District establishment of traffic education program. The trustees of any district operating a junior high school or high school may establish and maintain a traffic education course. The traffic education course shall be:

(1) for students who are 15 years old or older or will have reached their 15th birthday within 6 months of the course completion;

(2) taught by a teacher of traffic education;

(3) conducted in accordance with the basic course requirements established by the superintendent of public instruction; and

(4) taught during regular school hours, after regular school hours, on Saturdays, or as a summer school course, at the option of the trustees.

History: En. 75-7905 by Sec. 439, Ch. 5, L. 1971; R.C.M. 1947, 75-7905.

20-7-504. State traffic education account — proceeds earmarked for the account. (1) There is a traffic education account in the treasury of the state of Montana. There shall be paid into this account a portion of the fines and forfeitures collected in any court except a justice's court from persons apprehended or arrested by highway patrol officers or department of highways peace officers for any violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 relating to the operation or use of motor vehicles in the following amounts:

(a) if a fine is imposed, 25% of the fine imposed;

(b) if multiple offenses are involved, 25% of the total sum of all fines imposed;

(c) if a fine is suspended, in whole or in part, 25% of the fine actually paid; and

(d) if any deposit of bail is made for an offense to which this section applies and the bail is forfeited, 25% of the forfeited bail.

(2) A portion of all money from the collection of fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses shall be contributed to the traffic education account as provided in 61-5-121.

History: En. 75-7902 by Sec. 436, Ch. 5, L. 1971; R.C.M. 1947, 75-7902; amd. Sec. 96, Ch. 421, L. 1979; amd. Sec. 1, Ch. 487, L. 1981; amd. Sec. 7, Ch. 277, L. 1985; amd. Sec. 13, Ch. 557, L. 1987.

Compiler's Comments

1987 Amendment: In second sentence of (1), after "court", inserted "except a justice's court".

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Application for license, 61-5-107.

Fees for licenses, 61-5-111, 61-5-114.

Penalties for violation of traffic laws, Title 61, ch. 8, part 7.

20-7-505. Transmittal of proceeds from fines and other sources. (1) The portion of the proceeds from fines and bail forfeitures, except those paid to a justice's court, which are to be deposited in the traffic education account shall be transmitted to the county treasurer by the court collecting them, in the manner and at the times that fines and bail forfeitures are transmitted to the county treasurer under law. The court shall indicate what portion of each fine is to be credited to the traffic education account. The county treasurer shall transmit monthly to the state treasurer, without deduction, the portions of the fines received, except those paid to a justice's court, which are to be credited to the traffic education account.

(2) When a court is required to transmit fees, fines, and forfeitures directly to the state treasurer, the gross proceeds including the portion of the fines to be credited to the traffic education account shall be transmitted to the state treasurer and the appropriate portion shall be deposited in the traffic education account.

History: En. 75-7903 by Sec. 437, Ch. 5, L. 1971; R.C.M. 1947, 75-7903; amd. Sec. 2, Ch. 487, L. 1981; amd. Sec. 14, Ch. 557, L. 1987.

Compiler's Comments

1987 Amendment: In first and third sentences of (1) inserted "except those paid to a justice's court".

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

20-7-506. Annual allocation and distribution of traffic education account proceeds — allocation for state administration. (1) The superintendent of public instruction shall annually order the distribution of all moneys in the traffic education account to the districts conducting approved traffic education courses. The distribution of the traffic education moneys shall be based on the distribution policy promulgated by the superintendent of public instruction, provided that the reimbursements to districts shall be based upon the number of pupils who, in a given school fiscal year, complete an approved traffic education course, including both the classroom instruction and behind-the-wheel driving.

(2) Before such fund is disbursed, there shall be deducted an amount necessary to provide for the state administration of the traffic education program by the superintendent of public instruction. Such state administration may include:

(a) development, printing, and distribution of essential materials;

(b) preparation of teachers of traffic education;

(c) state supervision of the program; and

(d) any and all other activities deemed necessary by the superintendent of public instruction.

History: En. 75-7906 by Sec. 440, Ch. 5, L. 1971; amd. Sec. 1, Ch. 307, L. 1973; R.C.M. 1947, 75-7906.

20-7-507. District traffic education fund. The trustees of any district maintaining a traffic education course shall establish a special nonbudgeted fund with the county treasurer for traffic education. The state traffic education reimbursement and all nontax receipts for traffic education shall be deposited in the district's traffic education fund. The expenditure of the moneys deposited in the district's traffic education fund shall not be subject to the budgeting provisions of this title and the moneys may be expended for traffic education.

History: En. 75-7907 by Sec. 441, Ch. 5, L. 1971; R.C.M. 1947, 75-7907.

Cross-References

Traffic education fund, 20-9-510.

Part 6

Textbook Regulation

Part Cross-References

Proscribed acts relating to contracts and claims, Title 2, ch. 2, part 2.

"Textbook" and "textbook dealer" defined, 20-1-101.

Conflict of interest, 20-1-205.

School property, Title 20, ch. 6, part 6.

Conflicts of interest, letting contracts, and calling for bids, 20-9-204.

20-7-601. Free textbook provisions. (1) The trustees of each district shall provide free textbooks to the public school pupils of the district. The trustees shall purchase such textbooks at the expense of the district and loan them to such pupils free of charge, subject to the textbook damage policy of the trustees.

(2) For the purpose of this section only, textbooks shall not include those books or manuals which are rendered unusable as a result of having pages designed to be written upon or removed during the course of the study they serve. When the parents of a pupil attending a school of the district so request, such textbooks shall be sold to them at cost.

History: En. 75-7602 by Sec. 394, Ch. 5, L. 1971; R.C.M. 1947, 75-7602.

Cross-References

Free education to be provided, Art. X, sec. 1, Mont. Const.

20-7-602. Textbook selection and adoption. Textbooks shall be selected by the district superintendent or by the school principal if there is no district superintendent. Such selections shall be subject to the approval of the trustees. In districts not employing a district superintendent or principal, the trustees shall select and adopt the textbooks on the basis of recommendations of the county superintendent.

History: En. 75-7603 by Sec. 395, Ch. 5, L. 1971; R.C.M. 1947, 75-7603.

20-7-603. Textbooks obtained from licensed textbook dealer. Textbooks selected and adopted by districts shall be obtained from a licensed textbook dealer.

History: En. 75-7604 by Sec. 396, Ch. 5, L. 1971; amd. Sec. 1, Ch. 89, L. 1973; R.C.M. 1947, 75-7604.

Cross-References

School officers not to act as agents, 20-1-201.

20-7-604. Licensing textbook dealers. (1) Textbook dealers shall be licensed to sell textbooks by the superintendent of public instruction. To obtain a license a textbook dealer shall first file with the superintendent of public instruction his written agreement to:

(a) guarantee that textbooks shall be supplied to any district at the listed, uniform sales prices in effect for schools, except that such prices may be reduced in accordance with this section;

(b) guarantee that at no time shall any textbook sale price in Montana be a larger amount than the sale price to schools anywhere else in the United States under similar conditions of transportation and marketing; and

(c) reduce automatically the listed, uniform sales price to schools whenever reductions of these prices are made anywhere in the United States.

(2) Textbook dealers filing the written agreement with the superintendent of public instruction shall also file a surety bond with the secretary of state. The surety bond shall run to the state of Montana and be conditioned on the faithful performance of all duties imposed upon textbook dealers for the purpose of regulating the supply of textbooks to districts. The amount of the surety bond shall be set by the superintendent of public instruction and shall be not less than $2,000 but not more than $10,000. The bond shall be approved by the attorney general. It shall be the responsibility of the textbook dealer to maintain the surety bond on a current basis.

(3) When the textbook dealer has complied with the written agreement and surety bond requirements for licensing, the superintendent of public instruction shall issue a license to the textbook dealer.

History: En. 75-7605 by Sec. 397, Ch. 5, L. 1971; amd. Sec. 2, Ch. 89, L. 1973; R.C.M. 1947, 75-7605.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

20-7-605. Notification and processing of complaint against a licensed textbook dealer. (1) A district or county superintendent shall notify the superintendent of public instruction whenever it is ascertained that a licensed textbook dealer is:

(a) offering to sell textbooks at a higher price than the listed uniform sales price filed with the superintendent of public instruction;

(b) offering to sell textbooks at a higher shipping point price than the shipping point price of the same textbooks distributed elsewhere in the United States; or

(c) in any other way performing contrary to the laws regulating the offering of textbooks for sale or adoption to districts.

(2) Upon receipt of such notification from the district or county superintendent, the superintendent of public instruction shall notify the appropriate licensed textbook dealer of the complaint. If the superintendent of public instruction finds that the licensed textbook dealer has violated any provision of this section and the dealer fails to rectify his error within 30 days of the notification of the finding of a violation, he shall forfeit his surety bond. The attorney general, upon written request of the superintendent of public instruction, shall proceed to collect by legal action the full amount of the surety bond. Any amount so recovered shall be paid into the state public school equalization aid account.

History: En. 75-7607 by Sec. 399, Ch. 5, L. 1971; amd. Sec. 3, Ch. 89, L. 1973; amd. Sec. 25, Ch. 266, L. 1977; R.C.M. 1947, 75-7607.

20-7-606. Doing business without textbook dealer's license — penalty. Any textbook dealer who shall sell or offer for sale or adoption a textbook to any district or county superintendent without first obtaining a textbook license from the superintendent of public instruction shall be guilty of a misdemeanor. Upon conviction of such misdemeanor, he shall be fined not less than $500 or more than $2,000.

History: En. 75-7608 by Sec. 400, Ch. 5, L. 1971; R.C.M. 1947, 75-7608.

20-7-607. Restricting competition — penalty. At any time a licensed textbook dealer enters into any understanding, agreement, or combination to control textbook prices or otherwise restrict competition in the sale of textbooks, he shall forfeit his surety bond and textbook dealer's license. The attorney general shall institute and prosecute legal proceedings for the forfeiture of the surety bond of such licensed textbook dealer and for revocation of his textbook dealer's license.

History: En. 75-7609 by Sec. 401, Ch. 5, L. 1971; R.C.M. 1947, 75-7609.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

20-7-608. Offer or acceptance of emoluments or other inducements — penalty. (1) No textbook dealer or his agent shall offer any emolument or other inducement to any trustee or school employee to influence the selection, adoption, or purchase of textbooks.

(2) No trustee, county superintendent, or school employee shall accept any emolument or other inducement from a textbook dealer or agent of such dealer for the use of his influence in the selection, adoption, or purchase of textbooks.

(3) The violation of any provisions of this section shall constitute a misdemeanor. In addition, any trustee, county superintendent, or school employee convicted of such misdemeanor shall be removed from his position.

(4) Nothing in this section shall be construed to prevent the supplying of a necessary number of sample textbooks for the purpose of examination by school officials or school employees.

History: En. 75-7610 by Sec. 402, Ch. 5, L. 1971; R.C.M. 1947, 75-7610.

Cross-References

Trustee removal, 20-3-310.

Personal liability of trustees, 20-3-332.

Official misconduct, 45-7-401.

Misdemeanor — no penalty specified, 46-18-212.

Part 7

Adult Education

Part Cross-References

High school equivalency — certification, 20-7-131.

20-7-701. Definition of adult education and adult basic education. (1) As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(a) The term "adult education" means the instruction of persons 16 years of age or older who are not regularly enrolled, full-time pupils for the purposes of ANB computation.

(b) The term "adult basic education" means instruction in basic skills such as reading, writing, arithmetic, and other skills required to function in society offered to persons 16 years of age or older who are not regularly enrolled, full-time pupils for the purposes of ANB computation. Adult basic education may include any subject normally offered in the basic curricula of an accredited elementary or secondary school in the state.

(2) Neither definition may include the instruction in vocational-technical centers.

History: En. 75-7512 by Sec. 383, Ch. 5, L. 1971; amd. Sec. 2, Ch. 290, L. 1977; R.C.M. 1947, 75-7512; amd. Sec. 34, Ch. 658, L. 1987.

Compiler's Comments

1987 Amendment: Before "vocational-technical" deleted "postsecondary".

Cross-References

ANB defined, 20-1-101.

Calculation of average number belonging (ANB), 20-9-311.

20-7-702. Authorization to establish adult education program. The trustees of any district or community college district may establish and operate an adult education program at any time of the day when facilities and personnel are available. An adult education program may provide both basic and secondary general education, vocational education, American citizenship education, including courses in the English language and American history and government, or any other areas of instruction approved by the trustees.

History: En. 75-7513 by Sec. 384, Ch. 5, L. 1971; R.C.M. 1947, 75-7513.

20-7-703. Trustees' policies for adult education. The trustees shall adopt such policies as are necessary for the supervision and administration of adult education when a program is established in the district.

History: En. 75-7514 by Sec. 385, Ch. 5, L. 1971; R.C.M. 1947, 75-7514.

20-7-704. Adult education tuition and fees. The trustees of a district or community college district shall have the authority to charge tuition for instruction and to charge fees for the use of equipment and materials. The amount of such tuition and fees shall be determined on a per-course basis or on the basis of the cost of the entire adult education program. All proceeds from tuition and fees shall be deposited in the adult education fund.

History: En. 75-7516 by Sec. 387, Ch. 5, L. 1971; R.C.M. 1947, 75-7516.

20-7-705. Adult education fund. (1) A separate adult education fund shall be established when an adult education program is operated by a district or community college district. The financial administration of such fund shall comply with the budgeting, financing, and expenditure provisions of the laws governing the schools.

(2) Whenever the trustees of any district establish an adult education program under the provisions of 20-7-702, they shall establish an adult education fund under the provisions of this section. The adult education fund shall be the depository for all federal, state, and district moneys received by the district in support of the adult education program.

(3) The trustees of any district may authorize the levy of a tax of not more than 1 mill on the district, except that trustees of a county high school district that is not unified with an elementary district may authorize a levy of not more than 2 mills on the district, for the operation of an adult education program when the superintendent of public instruction has approved the educational program to be supported by such levy. The approval of the superintendent of public instruction shall have been acquired by the trustees before the fourth Monday of June in order to include the expenditures to be financed by the levy in the preliminary budget. The superintendent of public instruction shall promulgate rules and forms for such approval.

(4) Whenever the trustees of any district decide to offer an adult education program during the ensuing school fiscal year, they shall budget for the cost of such program in the adult education fund of the preliminary budget. Any expenditures in support of the adult education program under the final adult education budget shall be made in accordance with the financial administration provisions of this title for a budgeted fund.

(5) When a tax levy for an adult education program which has been approved by the superintendent of public instruction is included as a revenue item on the final adult education budget, the county superintendent shall report such levy requirement to the county commissioners on the second Monday of August and a levy on the district shall be made by the county commissioners in accordance with 20-9-142.

History: En. Secs. 346, 386, Ch. 5, L. 1971; R.C.M. 1947, 75-7207, 75-7515; amd. Sec. 1, Ch. 215, L. 1981.

Cross-References

School budgets, Title 20, ch. 9, part 1.

Administration of finances, Title 20, ch. 9, part 2.

Education trust fund interest earnings account, 90-6-211.

20-7-706 through 20-7-710 reserved.

20-7-711. State policy for adult basic education. Affirming that reading, writing, and other basic educational skills are vital for all citizens in modern society, the legislature declares that it is the continuing policy of Montana to encourage adult basic education programs that will develop the full educational potential of each citizen. The legislature recognizes that funds from local, state, and federal sources may be necessary to provide the basic education needed by Montana citizens.

History: En. 75-7514.1 by Sec. 1, Ch. 290, L. 1977; R.C.M. 1947, 75-7514.1.

20-7-712. Adult basic education fund and its distribution. (1) To encourage adult basic education, the legislature may appropriate funds to the superintendent of public instruction for the support of adult basic education programs in any school or community college district.

(2) The superintendent of public instruction shall direct the distribution of funds appropriated by the legislature for adult basic education. The trustees of any district may apply to the superintendent for funds for its adult basic education courses. The financial administration and accounting of adult basic education funds shall be the same as that of adult education.

History: En. 75-7515.1 by Sec. 3, Ch. 290, L. 1977; R.C.M. 1947, 75-7515.1.

Cross-References

School budgets, Title 20, ch. 9, part 1.

Administration of finances, Title 20, ch. 9, part 2.

20-7-713. Adult basic education fund cash reserve. At the end of each school fiscal year, the trustees of any school district that operates an adult basic education program may designate what portion of the adult basic education fund end-of-the-year cash balance that is to be earmarked as cash reserve for the purpose of paying, whenever a cash flow shortage occurs, adult basic education fund warrants issued by the district from July 1 through June 30 of the ensuing school fiscal year. The amount of the adult basic education fund cash balance that is earmarked as cash reserve may not exceed 35% of the final adult basic education fund budget for the ensuing school fiscal year.

History: En. Sec. 1, Ch. 120, L. 1981.

Cross-References

School fiscal year, 20-1-301.

Part 8

Public Recreation

Part Cross-References

Culture, social services, and recreation, Title 7, ch. 16.

Recreation, Title 23, ch. 2.

Footpaths and bicycle trails, Title 60, ch. 3, part 3.

20-7-801. Public recreation program authorized. (1) Any city or town, including any board of park commissioners, may expend funds from the band fund and the park fund of the city or town for the purpose of operating a program of public recreation and playgrounds and for this purpose may acquire, equip, and maintain land, buildings, and other recreation facilities.

(2) Any school district may cooperate in such program.

History: En. Sec. 1, Ch. 71, L. 1939; R.C.M. 1947, 62-211; amd. Sec. 4, Ch. 384, L. 1979.

Cross-References

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

Use of park funds for public recreation, 7-16-4107.

20-7-802. How program operated — independently or cooperatively — delegation. Any city, town, school district, or any board thereof, including a board of park commissioners, may:

(1) (a) operate such a program independently; or

(b) cooperate in its operation and conduct with any other body authorized hereby to conduct such a program and in any manner upon which they may mutually agree; or

(2) delegate the operation of the program to a board of recreation created by any city, town, school district, or any board thereof, including any board

of park commissioners, operating or proposing to operate a program independently or with any cooperating bodies in such manner as they may agree, and all moneys appropriated for the purposes of such program may be expended by such board.

History: **En. Sec. 2, Ch. 71, L. 1939; R.C.M. 1947, 62-212.**

Cross-References

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

20-7-803. Authority to accept gifts. Any corporation, board, or body hereinbefore designated, given authority to operate and conduct a recreation program or given charge of such program, is authorized to accept gifts and bequests in the name or names of the sponsors of said program, as said sponsors may agree, for the benefit of said recreational work, to employ directors and instructors of said recreational work, and to conduct its activities on:

(1) property under its custody and management;

(2) other public property under the custody of any other public corporation, body, or board, with the consent of such corporation, body, or board; and

(3) private property, with the consent of its owners.

History: **En. Sec. 3, Ch. 71, L. 1939; R.C.M. 1947, 62-213.**

20-7-804. Authority of board of public education. In all cases where school property is utilized, the board of public education shall have authority:

(1) to establish minimum qualifications of local recreational directors and instructors; and

(2) to prepare or cause to be prepared, published, and distributed adequate and appropriate manuals and other materials as it may deem necessary or suitable to carry on said recreational program and to carry out the provisions of this part.

History: **En. Sec. 4, Ch. 71, L. 1939; R.C.M. 1947, 62-214.**

20-7-805. Recreational use of school facilities secondary. The facilities of any school district operating a recreational program pursuant to the provisions of this part shall be used primarily for the purpose of conducting a regular school curriculum, and the use of school facilities for recreational purposes authorized by this part shall be secondary.

History: **En. Sec. 5, Ch. 71, L. 1939; R.C.M. 1947, 62-215.**

Part 9

Gifted and Talented Children

Part Cross-References

Board of Public Education — policies on gifted and talented children, 20-2-121.

20-7-901. Definitions. As used in this part the following definitions apply:

(1) "Gifted and talented children" means children of outstanding abilities who are capable of high performance and require differentiated educational programs beyond those normally offered in public schools in order to fully

achieve their potential contribution to self and society. The children so identified include those with demonstrated achievement or potential ability in a variety of worthwhile human endeavors.

(2) "Professionally qualified persons" means teachers, administrators, school psychologists, counselors, curriculum specialists, artists, musicians, and others with special training who are qualified to appraise pupils' special competencies.

History: **En Sec. 1, Ch. 310, L. 1979.**

20-7-902. School district programs to identify and serve the gifted and talented child. (1) A school district may identify gifted and talented children and devise programs to serve them.

(2) In identifying gifted and talented children, the school district shall:

(a) consult with professionally qualified persons and the parents of children being evaluated;

(b) consider a child's demonstrated or potential gifts or talents; and

(c) use comprehensive and appropriate assessment methods including objective measures and professional assessment measures.

History: **En Sec. 2, Ch. 310, L. 1979.**

20-7-903. Programs to serve gifted and talented children — compliance with board policy — funding. (1) The conduct of programs to serve gifted and talented children must comply with the policies recommended by the superintendent of public instruction and adopted by the board of public education.

(2) Proposals approved by the superintendent of public instruction in accordance with policies of the board of public education must be funded by money appropriated to the superintendent for that purpose.

(3) A school district shall match funds provided by the superintendent for a gifted and talented children's program with equal funds from other sources. "In kind" contributions may not be used to constitute such a match. Funds must be administered by the school district as provided in 20-9-507.

(4) The superintendent of public instruction may deduct reasonable costs of administration from the funds appropriated for the purposes of this part.

History: **En Sec. 3, Ch. 310, L. 1979; amd. Sec. 2, Ch. 312, L. 1983.**

20-7-904. Review and recommendations of proposals. (1) The policies of the board of public education must assure that program proposals submitted by school districts to the superintendent of public instruction contain:

(a) evidence that identification procedures are comprehensive and appropriate;

(b) a program description including stated needs and measurable objectives designed to meet those needs;

(c) evidence that the activities are appropriate and will serve to achieve the program objectives; and

(d) a method to evaluate the effectiveness of the program.

(2) School districts may request assistance from the staff of the superintendent in formulating program proposals.

(3) The superintendent of public instruction shall supervise and coordinate the programs for gifted and talented children by:

(a) recommending to the board of public education the adoption of those policies necessary to establish a planned and coordinated program; and

(b) establishing a procedure for review and approval of program proposals.

History: **En Sec. 4, Ch. 310, L. 1979; amd. Sec. 3, Ch. 312, L. 1983.**

CHAPTER 8

MONTANA SCHOOL FOR THE DEAF AND BLIND

Part 1 — General Provisions

20-8-101. Montana school for deaf and blind — independent institution.
20-8-102. Objects and purposes.
20-8-103. Board of public education rules.
20-8-104. Eligibility of children for admittance.
20-8-105. When duty of parent or guardian of child to make application for admission of child — penalty.
20-8-106. Duration of attendance at school — transfer.
20-8-107. Admission of nonresident children and advance payment of cost — Indian children.
20-8-108. Provisions for indigent students.
20-8-109. Time of regular school term.
20-8-110. Property vested in school.
20-8-111. Duty of board of public education as to property of school.
20-8-112. Expenditure of school moneys.
20-8-113. Duties of superintendent of school for the deaf and blind.
20-8-114. Repealed.
20-8-115. Repealed.
20-8-116. Employment placement — continuing education.
20-8-117. Repealed.
20-8-118. Repealed.
20-8-119. Repealed.
20-8-120. Communications skills required of certain employees.
20-8-121. Transportation of students at school.

Chapter Compiler's Comments

Salary Schedule and Appropriation: Chapter 604, L. 1987, provided for a salary adjustment for certified or licensed faculty of the Montana School for the Deaf and Blind for the biennium ending June 30, 1989.

Chapter Cross-References

Application of statewide classification and pay plan to school employees, 2-18-103.

Attendance of pupils at schools, Title 20, ch. 5, part 1.

Rights of the handicapped, Title 49, ch. 4.

Developmentally disabled, Title 53, ch. 20.

Part 1

General Provisions

20-8-101. Montana school for deaf and blind — independent institution. The school for the deaf and blind, formerly located at Boulder in connection with the Montana state training school but transferred before July 1, 1943, to the city of Great Falls, shall be known and designated as the Montana school for the deaf and blind and shall be conducted as a separate and independent unit and institution of the state of Montana under the general supervision, direction, and control of the board of public education. However, the transfer of that school or any change in the name thereof or in the objects or purposes thereof may not be considered or construed to impair or work any forfeiture or alteration of any rights, grants, or property made to or acquired by that school or by the state for the use and benefit of that school prior to July 1, 1943.

History: **En. Sec. 1, Ch. 182, L. 1943; amd. Sec. 39, Ch. 266, L. 1977; R.C.M. 1947, 80-102; amd. Sec. 1, Ch. 151, L. 1983.**

Cross-References

Board of Public Education, Title 20, ch. 2, part 1.

20-8-102. Objects and purposes. The Montana school for the deaf and blind shall be a residential and boarding school for children and adolescents who are deaf or blind or whose hearing or sight is so defective that they cannot be successfully taught and for such reason are unable to receive a sufficient or proper education in the public schools of the state. The object and purpose of such school shall be to furnish and provide, by the use of specialized methods and systems, an ordinary public school education and to teach such trades and vocations as will enable children attending such school to become independent and self-sustaining citizens. Increased and additional facilities shall be provided from time to time for the more thorough and successful training of those who show a special aptitude for becoming proficient at such trades or vocations. In the interest of economy and increased opportunities for vocational education and training and in order that pupils may be practically taught such trades and vocations, so much of all carpentering, printing, painting, baking, sewing, and other or similar work necessary to be done for and in and about the school, as the superintendent of the school may deem practical, shall be done by such pupils under competent teachers and specialists employed for such purpose, and this requirement shall apply to both male and female pupils.

History: **En. Sec. 2, Ch. 182, L. 1943; re-en. Sec. 1, Ch. 169, L. 1949; R.C.M. 1947, 80-103; amd. Sec. 2, Ch. 151, L. 1983.**

20-8-103. Board of public education rules. The board of public education shall adopt and prescribe such rules as the board may deem necessary and proper for the maintenance and government of the school, the admission of children thereto in conformity with the provisions of this chapter, and the qualifications and compensation of the superintendent and teaching staff of the school, provided that said superintendent must have a ready and working knowledge of the sign language and must have taught 3 or more years in a school for the deaf.

History: **En. Sec. 3, Ch. 182, L. 1943; R.C.M. 1947, 80-104.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

20-8-104. Eligibility of children for admittance. On proper application being made therefor, as prescribed by the rules of the board of public education, deaf and blind children who are not more than 18 years of age residing within the state of Montana and nonresident children who are not more than 18 years of age, who are not mentally deficient, dangerously diseased in body, or of confirmed immorality or incapacitated for useful instruction by reason of physical disability may be admitted to such school.

History: **En. Sec. 4, Ch. 182, L. 1943; amd. Sec. 1, Ch. 282, L. 1967; R.C.M. 1947, 80-105; amd. Sec. 3, Ch. 151, L. 1983.**

20-8-105. When duty of parent or guardian of child to make application for admission of child — penalty. (1) Every parent, guardian, or other person having the custody or control of any child between the ages of 5 and 18 years whose hearing or sight is so defective that such child cannot be properly educated in the public schools of the state shall make application to the superintendent of said school for admission to such school for at least 9 months during each school year for a period of 10 years, unless such child is being taught in a private school or in a similar institution in another state which affords such child an education to the same extent as such child can receive in the Montana school for the deaf and blind or unless such child be found, for any reason, to be ineligible to admission to such school. If such child is being taught in a private school or in a similar institution in another state, such attendance must be for at least 9 months in each year for 10 years, unless such child shall arrive at the age of 18 years or shall have become self-sustaining before the expiration of such 10-year period.

(2) The failure of any parent, guardian, or other person having the custody or control of any blind or deaf child to comply with the provisions of this section shall be deemed a misdemeanor and punishable by a fine of not less than $5 or more than $25 for the first offense and not less than $25 or more than $50 for each subsequent offense. Upon conviction of any parent, guardian, or person having custody or control of any such child of a failure to comply with the provisions of this section, the court in which such conviction is had shall enter in its docket an order directing such parent, guardian, or other person to comply with the provisions of this section within 10 days thereafter and shall deliver a copy of such order to such parent, guardian, or other person.

History: **En. Sec. 5, Ch. 182, L. 1943; R.C.M. 1947, 80-106; amd. Sec. 4, Ch. 151, L. 1983.**

Cross-References

Contempts, Title 3, ch. 1, part 5.

20-8-106. Duration of attendance at school — transfer. (1) Every child admitted to such school shall be entitled to attend such school until reaching the age of 21 years unless the board of public education and superintendent determine that attendance at the school will not benefit the child, provided that nothing in this section shall be construed so as to prevent the suspension or expulsion of any child at any time for insubordination or other cause deemed good and sufficient by the board of public education and superintendent.

(2) Transfer of a student from the school to another educational placement must be in accordance with rules of the board of public education.

History: **En. Sec. 6, Ch. 182, L. 1943; amd. Sec. 2, Ch. 282, L. 1967; R.C.M. 1947, 80-107; amd. Sec. 5, Ch. 151, L. 1983.**

20-8-107. Admission of nonresident children and advance payment of cost — Indian children. (1) Deaf and blind children who are not residents of the state of Montana, upon application being made therefor, may be admitted to the school, subject to all eligibility requirements prescribed for children who are residents of the state, provided that for each such nonresident child there shall be paid to the school in advance a sum of money the amount of which shall be determined by a careful estimate of the whole per capita cost of maintaining the school during the year immediately preceding the date of the application, and provided further that no nonresident child shall be admitted to the school except when the full capacity thereof is not required for children who are residents of the state.

(2) Indian children who are Montana residents and wards of the United States shall be eligible to and shall be admitted to such school on the same terms as residents.

History: En. Sec. 7, Ch. 182, L. 1943; amd. Sec. 1, Ch. 194, L. 1953; amd. Sec. 1, Ch. 182, L. 1957; R.C.M. 1947, 80-108; amd. Sec. 6, Ch. 151, L. 1983.

Cross-References

Rules for determining residence, 1-1-215.

20-8-108. Provisions for indigent students. In all cases where a person to be sent to said school is too poor to pay for necessary clothing and transportation, the judge of the district court of the district where such person resides, upon application of any relative or friend or of any officer of the county where said person resides, shall, if he deem the person a proper subject, make an order to that effect which shall be certified by the clerk of the court to the superintendent of said school, who shall then provide the necessary clothing and transportation at the expense of the county and, upon his rendering his proper accounts therefor quarter-annually, the county commissioners shall allow and pay the same out of the county treasury.

History: En. Sec. 2344, Pol. C. 1895; re-en. Sec. 1170, Rev. C. 1907; re-en. Sec. 1463, R.C.M. 1921; Cal. Pol. C. Sec. 2240; re-en. Sec. 1463, R.C.M. 1935; R.C.M. 1947, 80-109.

20-8-109. Time of regular school term. The regular term of school shall be as provided in 20-1-301.

History: En. Sec. 9, Ch. 182, L. 1943; R.C.M. 1947, 80-111; amd. Sec. 7, Ch. 151, L. 1983.

20-8-110. Property vested in school. All lands heretofore granted by the government of the United States to the state of Montana for the use and benefit of the deaf and dumb are hereby set apart and declared to be for the use and benefit in perpetuity of the Montana school for the deaf and blind, and all funds arising from the sale or leasing of said lands, or any part or portion thereof, shall be applied to the proper use and benefit thereof and shall vest in the state of Montana for the use and benefit thereof.

History: En. Sec. 11, Ch. 182, L. 1943; R.C.M. 1947, 80-113; amd. Sec. 8, Ch. 151, L. 1983.

20-8-111. Duty of board of public education as to property of school. The board of public education has a statutory appropriation, as provided in 17-7-502, and shall, either directly or through a contract with a nonprofit corporation, receive, hold, manage, use, and dispose of real and personal property made over to such board or to the state of Montana by purchase, gift, devise, bequest, or otherwise acquired and the proceeds, interest, and income thereof for the use and benefit of said school. All donations, gifts, devises, or grants made before, on, or after October 1, 1983, to the school shall vest in the board or its designee, as trustee for the state of Montana, for the use and benefit of the school and its students.

History: En. Sec. 12, Ch. 182, L. 1943; R.C.M. 1947, 80-114; amd. Sec. 9, Ch. 151, L. 1983; amd. Sec. 31, Ch. 703, L. 1985.

20-8-112. Expenditure of school moneys. No moneys belonging to the deaf and blind school fund shall be expended for any purpose other than for the Montana school for the deaf and blind, and any moneys belonging to any fund or funds which may be hereafter created for such school shall be expended for the express purpose designated in the act or acts creating such fund or funds and for no other purpose.

History: En. Sec. 14, Ch. 182, L. 1943; R.C.M. 1947, 80-116; amd. Sec. 10, Ch. 151, L. 1983.

20-8-113. Duties of superintendent of school for the deaf and blind. The superintendent of the Montana school for the deaf and blind shall:

(1) administer the programs and functions of the school within the guidelines of statutes and under policies prescribed by the board of public education;

(2) prepare and submit reports, summaries, and other information requested by the board;

(3) establish and pursue professional and technical contacts that will contribute information and guidance toward effective and efficient operation of the school;

(4) maintain effective liaison between the school, the superintendent of public instruction, local school districts, and other public and private agencies that have an interest in or influence upon the school;

(5) pursue a program of information for parents, professionals, and the general public.

History: En. Sec. 1, Ch. 189, L. 1945; R.C.M. 1947, 80-117; amd. Sec. 11, Ch. 151, L. 1983.

20-8-114. Repealed. Sec. 14, Ch. 151, L. 1983.

History: En. Sec. 2, Ch. 189, L. 1945; R.C.M. 1947, 80-118.

20-8-115. Repealed. Sec. 14, Ch. 151, L. 1983.

History: En. Sec. 3, Ch. 189, L. 1945; R.C.M. 1947, 80-119.

20-8-116. Employment placement — continuing education. (1) The superintendent shall gather and record data and statistics to help him locate suitable employment for blind, deaf, and hard-of-hearing persons not in attendance at said school or for those who have been trained by the department of social and rehabilitation services when it so requests such assistance. He shall consult with various county, state, and federal agencies and with the department of social and rehabilitation services to secure employment for self-sustaining persons. He shall coordinate his work with such federal agencies as social security and reemployment for those out of work, as required by this part.

(2) The superintendent may, within funding limitations, develop and offer continuing education programs of a vocational nature for the visually impaired and hearing impaired that use the campus and facilities of the

school during the summer months and other times when the school's facilities are not being used by its students.

History: En. Sec. 4, Ch. 189, L. 1945; R.C.M. 1947, 80-120; amd. Sec. 12, Ch. 151, L. 1983.

20-8-117. Repealed. Sec. 14, Ch. 151, L. 1983.

History: En. Sec. 5, Ch. 189, L. 1945; R.C.M. 1947, 80-121.

20-8-118. Repealed. Sec. 14, Ch. 151, L. 1983.

History: En. Sec. 6, Ch. 189, L. 1945; R.C.M. 1947, 80-122.

20-8-119. Repealed. Sec. 14, Ch. 151, L. 1983.

History: En. Sec. 7, Ch. 189, L. 1945; R.C.M. 1947, 80-123.

20-8-120. Communications skills required of certain employees. (1) Each permanent employee of the school who works with deaf children or works for or with a fellow employee who is deaf must acquire acceptable total communications skills as prescribed by the board of public education by the end of his first year of employment.

(2) Upon request to the board of public education by the superintendent, an exception to this requirement may be made for an employee not working directly with deaf children.

History: En. Sec. 13, Ch. 151, L. 1983.

20-8-121. Transportation of students at school. (1) The school for the deaf and blind shall provide the transportation expenses allowed in subsection (4) for a residential and boarding student at the school for the deaf and blind who is a resident of the state of Montana if the student is conveyed to and from the student's residence by:

(a) a scheduled air carrier as defined in 67-1-101;

(b) charter with a commercial air operator as defined in 67-1-101;

(c) a parent or guardian of the student, under an individual transportation contract with the school for the deaf and blind; or

(d) other transportation arrangements, provided that such transportation is by a carrier of passengers certified by the public service commission and approved by the superintendent of the school for the deaf and blind, pursuant to rules adopted by the board of public education.

(2) The superintendent of the school for the deaf and blind shall determine which method of transportation in subsection (1) is to be provided to a student, pursuant to rules adopted by the board of public education on transportation of residential and boarding students at the school.

(3) A parent or guardian who transports a student to or from the school under an individual transportation contract is entitled to reimbursement for such transportation, pursuant to rules adopted by the board of public education on such reimbursement.

(4) The transportation of a residential and boarding student provided in subsection (1) is limited to one round trip to the student's residence each month during such times as the school is in session. The superintendent of the school for the deaf and blind may grant a variance from this provision, but in no event may a reimbursement for travel expenses be provided more than nine times in any school fiscal year.

History: En. Sec. 1, Ch. 396, L. 1987.

CHAPTER 9

FINANCE

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Chapter Cross-References

Appropriations for public schools, Art. V, sec. 11, Mont. Const.

School district property — exemption from taxation, Art. VIII, sec. 5, Mont. Const.

Investment of public school fund, Art. VIII, sec. 13, Mont. Const.

Public school fund constitutional provisions, Art. X, sec. 2, 3, 5, Mont. Const.

Aid to sectarian schools prohibited, Art. X, sec. 6, Mont. Const.

Statutes imposing new duties on a school district to provide a means of financing, 1-2-113.

School district tax and revenue anticipation notes, Title 7, ch. 6, part 11.

Investment of local government funds, 17-6-204.

Part 1

School Budgets

20-9-101. Application of budget system for districts. The school budgeting procedure and provisions of this title apply to elementary and high school districts and, whenever specified, to community college districts and to all funds requiring the adoption of a budget. Each district shall separately propose and adopt a budget in accordance with the requirements of this title.

History: En. 75-6701 by Sec. 207, Ch. 5, L. 1971; amd. Sec. 14, Ch. 266, L. 1977; R.C.M. 1947, 75-6701; amd. Sec. 16, Ch. 392, L. 1979.

Cross-References

Definition of elementary and high school districts, 20-6-101.

Definition of community college districts, 20-15-101.

20-9-102. General supervision of school budgeting system. The superintendent of public instruction has general supervision over the school budgeting procedure and provisions, as they relate to elementary and high school districts, prescribed by law and shall establish such rules as are necessary to secure compliance with the school budgeting laws.

History: **En. 75-6702 by Sec. 208, Ch. 5, L. 1971; amd. Sec. 15, Ch. 266, L. 1977; R.C.M. 1947, 75-6702.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Powers and duties of Superintendent of Public Instruction, 20-3-106.

20-9-103. School budget form. (1) The format of the school budget form shall be prescribed by the superintendent of public instruction and shall provide for proper school budgeting procedures in accordance with the budgeting requirements of this title and generally accepted accounting principles. The superintendent of public instruction shall cause a sufficient number of the budget forms to be printed for use by all districts for each school fiscal year.

(2) Each district shall use the budget forms prescribed by the superintendent of public instruction except that a district may, with the approval of the superintendent of public instruction, use a more detailed form.

History: **En. 75-6704 by Sec. 210, Ch. 5, L. 1971; R.C.M. 1947, 75-6704.**

20-9-104. General fund cash reserve. At the end of each school fiscal year, the trustees of each district shall designate what portion of the general fund end-of-the-year cash balance shall be earmarked as cash reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. The amount of the general fund cash balance that is earmarked as cash reserve shall not exceed 35% of the final general fund budget for the ensuing school fiscal year and shall not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts. Any portion of the general fund end-of-the-year cash balance that is not earmarked for cash reserve purposes shall be cash reappropriated which shall be used for property tax reduction as provided in 20-9-141(1)(b)(iii).

History: **En. 75-6924 by Sec. 274, Ch. 5, L. 1971; R.C.M. 1947, 75-6924.**

20-9-105. Insurance fund cash reserve. At the end of each school fiscal year, the trustees of a school district may designate a portion of the end-of-the-year cash balance of the comprehensive insurance fund, as allowed by 2-9-212, to be earmarked as a cash reserve for the purpose of paying, whenever a cash flow shortage occurs, comprehensive insurance fund warrants issued by the district from July 1 through June 30 of the ensuing school fiscal year. The amount of the comprehensive insurance fund cash balance that is earmarked as a cash reserve may not exceed 35% of the final comprehensive insurance fund budget for the ensuing school fiscal year.

History: **En. Sec. 1, Ch. 121, L. 1981.**

Cross-References

Authority and duty of trustees to insure district property, 20-6-608.

20-9-106 through 20-9-110 reserved.

20-9-111. Initial budget items for completion — estimated budgeting authority. (1) During the month of March, the county superintendent shall complete the portions of the budget form providing information about the last completed school year and, separate from the budget form, estimate the maximum amount to be available for the general fund budget in the ensuing year without an additional levy. By April 10, the county superintendent shall send to each district two copies of the budget form, the general fund estimate, and any other information or data as may be required by the superintendent of public instruction or that the county superintendent may deem necessary.

(2) Upon receipt of the budget forms, the district shall complete those portions of them which require information about the then-current school year.

History: En. 75-6705 by Sec. 211, Ch. 5, L. 1971; R.C.M. 1947, 75-6705.

20-9-112. Repealed. Sec. 4, Ch. 183, L. 1983.

History: En. 75-6706 by Sec. 212, Ch. 5, L. 1971; R.C.M. 1947, 75-6706; amd. Sec. 17, Ch. 392, L. 1979.

20-9-113. Preparation and adoption of preliminary budget by trustees. (1) The trustees of each district shall meet at their regular place of meeting at any time from February 1 through the fourth Monday in June, at the discretion of the board, to adopt a preliminary budget for the next ensuing school fiscal year. This budget meeting may be continued from day to day but shall not exceed 5 days in total. Any taxpayer in the district may attend such meeting and be heard in regard to the preliminary budget or any item or amount proposed to be included in such budget. The preliminary budget shall include all funds which require the adoption of a budget and which the trustees wish to utilize during the ensuing year.

(2) The proposed expenditures adopted as the preliminary budget shall be entered on the appropriate portion of the budget form. The amount of the preliminary general fund budget for a district shall not exceed the foundation program of such district except in the manner permitted by the laws of Montana. If any appropriation item of the preliminary budget provides for the payment of wages or salaries to more than one person, the district shall attach to the preliminary budget a separate listing of each position of employment with the budgeted amount of compensation for each position.

(3) After the adoption of the preliminary budget by the trustees, the chairman of the trustees and the clerk of the district shall sign the budget form, and it shall constitute the preliminary budget for the district. The trustees shall send both copies of the adopted preliminary budget, with all appendages and any other information required by law, to the county superintendent on or before the fifth day after the fourth Monday of June.

(4) At least 2 weeks before the first meeting day on adoption of a preliminary budget for the ensuing school fiscal year, as required by this section, the trustees of a district shall publish a notice of the meeting at least one time in a newspaper of general circulation in the district. The notice must state that any taxpayer in the district may attend the meeting and be heard on the preliminary budget.

History: En. 75-6707 by Sec. 213, Ch. 5, L. 1971; R.C.M. 1947, 75-6707; amd. Sec. 1, Ch. 183, L. 1983; (4)En. Sec. 2, Ch. 183, L. 1983.

Cross-References

Open meetings, Title 2, ch. 3, part 2.

Meetings and quorum, 20-3-322.

Tuition paid by pupils — inclusion in tuition fund of preliminary budget, 20-5-307, 20-5-312.

Adult education program to be included in preliminary budget, 20-7-705.

Transportation fund budget to be included in preliminary budget, 20-10-143.

20-9-114. Preparation of preliminary budget by county superintendent if no budget submitted. If for any reason the trustees of any district fail to prepare and submit a preliminary budget to the county superintendent before July 10, the county superintendent shall prepare a preliminary budget for the district in the manner provided by law and shall note on the budget form the specific reasons why he has prepared it. For all purposes thereafter, such preliminary budget shall be considered to have been adopted by the trustees of the district in the regular manner.

History: En. 75-6708 by Sec. 214, Ch. 5, L. 1971; R.C.M. 1947, 75-6708.

20-9-115. Notice of preliminary budget filing and final budget meeting. Between July 10 and July 20 of each year, the clerk of each district shall publish notice one time in the official newspaper of the county stating that the preliminary budget for the district for the school fiscal year just beginning, as prepared and adopted by the trustees, is on file in his office and open to inspection by all taxpayers. The notice shall also state the time and place that the trustees will meet on the fourth Monday in July for the purpose of considering and adopting the final budget of the district, that the meeting of the trustees may be continued from day to day until the final adoption of the district's budget, and that any taxpayer in the district may appear at such meeting and be heard for or against any part of the budget.

History: En. 75-6709 by Sec. 215, Ch. 5, L. 1971; amd. Sec. 5, Ch. 277, L. 1977; amd. Sec. 1, Ch. 354, L. 1977; R.C.M. 1947, 75-6709; amd. Sec. 1, Ch. 131, L. 1979; amd. Sec. 31, Ch. 581, L. 1979.

Cross-References

Open meetings, Title 2, ch. 3, part 2.

20-9-116 through 20-9-120 reserved.

20-9-121. County treasurer's statement of cash balances and bond information. (1) By July 10, the county treasurer shall prepare a statement for each district showing the amount of cash on hand for each fund maintained by the district and the amount of the outstanding obligations against each fund at the close of the last completed school fiscal year. The county treasurer shall also include on each district's statement the details on the obligation for bond retirement and interest for the school fiscal year just beginning. The format of the statement on fund cash balances and bond information shall be prescribed by the superintendent of public instruction.

(2) By July 10, the county treasurer shall prepare a statement for each county school fund supported by countywide levies, showing the amount of cash on hand at the beginning of the school fiscal year, the receipts and apportionments, and the amount of cash on hand at the end of the school fiscal year, for each county school fund maintained during the immediately preceding school fiscal year. The format of this statement shall be prescribed by the superintendent of public instruction.

(3) On or before July 10, the county treasurer shall deliver the statements of district and county fund cash balances and the bond information for each

district to the county superintendent who shall attach such district statements to the applicable district's preliminary budget.

History: En. 75-6710 by Sec. 216, Ch. 5, L. 1971; R.C.M. 1947, 75-6710.

Cross-References

School fiscal year, 20-1-301.

Payment of debt service obligations, 20-9-440.

Redemption of bonds, 20-9-441.

20-9-122. Statement of district, city, and town valuations. (1) By the second Monday of July, the department of revenue or its agent in each county shall, at the time of delivering the completed assessment book to the county clerk under the provisions of 15-8-705, also deliver to the county superintendent and to each city or town clerk a statement showing separately for each district and each city or town in his county the total assessed value and the total taxable value of all property in such districts, cities, or towns, as these valuations appear in such completed assessment book.

(2) The county clerk shall, after the second Monday in August and before or at the time of delivering the assessment book to the department of revenue or its agent under the provisions of 15-10-306, prepare a statement showing separately for each district and each city or town in his county the total assessed value and the total taxable value of all property in such districts, cities, or towns, as these valuations appear in the assessment book after amendments, corrections, and additions made by the state and county tax appeal boards and entered on the assessment book. The county clerk shall immediately deliver a copy of his statement of assessed and taxable values for districts to the county superintendent and a copy of those portions of such statement for each city and town to the appropriate city or town clerk.

(3) In the case of a joint school district, the department of revenue or its agent and the county clerk shall, at the time of delivering their respective statements to the county superintendent, send a statement of the assessed value and taxable value of the portion of the joint school district situated in their county to the county superintendents and to the county commissioners of each county in which a part of the joint school district is situated.

History: En. 75-6711 by Sec. 217, Ch. 5, L. 1971; amd. Sec. 51, Ch. 391, L. 1973; R.C.M. 1947, 75-6711.

Cross-References

Assessment and map books, Title 15, ch. 8, part 7.

Entry of taxes, Title 15, ch. 10, part 3.

20-9-123. County superintendent's estimates of revenue and supply of other financial and statistical information. Before the fourth Monday of July, the county superintendent shall prepare estimates of the revenue available to finance each fund included on each district's preliminary budget. The preliminary budget revenue estimates shall be entered by the county superintendent in the appropriate portion of the form. The county superintendent shall also enter any other financial and statistical information which is necessary for the completion of the budget form and which is available prior to the fourth Monday of July.

History: En. 75-6712 by Sec. 218, Ch. 5, L. 1971; R.C.M. 1947, 75-6712.

Cross-References

County Superintendent to compute revenues for transportation fund budget, 20-10-144.

20-9-124 through 20-9-130 reserved.

20-9-131. Final budget meeting. (1) On the fourth Monday in July, at the time and place noticed pursuant to 20-9-115, the trustees of each district shall meet to consider the preliminary budget submitted to or prepared by the county superintendent, including all information and any attachments required by law.

(2) The trustees may continue the meeting from day to day but shall adopt the final budget for the district and determine the amounts to be raised by tax levies for the district not later than the second Monday in August and before the fixing of the tax levies for each district. Any taxpayer in the district may attend any portion of the trustees' meeting and be heard on the budget of such district or on any item or amount contained in such budget.

History: En. 75-6713 by Sec. 219, Ch. 5, L. 1971; amd. Sec. 6, Ch. 277, L. 1977; R.C.M. 1947, 75-6713; amd. Sec. 2, Ch. 131, L. 1979.

Cross-References

Open meetings, Title 2, ch. 3, part 2.

Meetings and quorum, 20-3-322.

20-9-132. Final budget adjustment procedures. At the final budget meeting of the trustees, they shall have the power to make any changes or corrections they may deem necessary or proper in any item or amount of the preliminary budget either by eliminating the item or amount or by increasing or reducing the amount of any item. When it appears to the trustees that the amount proposed to be expended for any item of the preliminary budget is in excess of the amount actually required to be expended for such item, the trustees shall reduce such amount to the amount actually required to be expended and shall enter in its minutes the reasons for such reduction.

History: En. 75-6714 by Sec. 220, Ch. 5, L. 1971; amd. Sec. 7, Ch. 277, L. 1977; R.C.M. 1947, 75-6714.

Cross-References

Tuition fund not subject to budget adjustment procedure, 20-5-307, 20-9-132.

20-9-133. Adoption and expenditure limitations of final budget. (1) When the trustees have caused the amount of an item of the budget for the district to be determined and set, they shall enter the amount in the portion of the budget form provided for the reporting of the final budget and upon completion of all the items, the chairman and clerk shall sign the budget form. The resulting budget shall constitute the final budget and the appropriations for the district for the current school fiscal year.

(2) Except as provided in subsection (3), the trustees and all officers and employees of the district shall be limited in making expenditures or incurring liabilities to the amount of such appropriations, except that transfers from any appropriation item to another appropriation item within a fund's budget may be made as provided by law. Except as provided in subsection (3), expenditures made, liabilities incurred, or warrants issued in excess of any of the final budget appropriations for any item, as originally determined or as revised by transfer, shall not be a liability of the district, and no money of the district shall ever be used to pay the same.

(3) If a district incurs a legal bonded debt payment after the final debt service fund budget for the current fiscal year has been adopted and if payment on the debt is required for the current fiscal year, payment on the debt in the current school fiscal year is allowed if money is available.

History: **En. 75-6716 by Sec. 222, Ch. 5, L. 1971; amd. Sec. 8, Ch. 277, L. 1977; R.C.M. 1947, 75-6716; amd. Sec. 1, Ch. 222, L. 1987.**

Compiler's Comments

1987 Amendment: In (2) inserted "Except as provided in subsection (3)" in two places; and inserted (3).

Cross-References

Personal liability of trustees, 20-3-332.

Authorization to lease land as obligation of final budget, 20-6-625.

20-9-134. Completion, filing, and delivery of final budgets. After the final budget of the elementary, high school, or community college district has been adopted by the trustees, the county superintendent shall complete all the remaining portions of the budget forms and shall:

(1) send the final budget information to the superintendent of public instruction, on the forms provided by the superintendent, on or before September 1;

(2) in the case of the community college districts, send the final budget information to the board of regents, on the forms provided by the community college coordinator, on or before September 1; and

(3) deliver a copy of the final budget for the district to the county treasurer on or before September 1.

History: **En. 75-6719 by Sec. 225, Ch. 5, L. 1971; amd. Sec. 10, Ch. 277, L. 1977; R.C.M. 1947, 75-6719; amd. Sec. 18, Ch. 392, L. 1979.**

20-9-135 through 20-9-140 reserved.

20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the total of the funding required for the district's final general fund budget less the amount established by the schedules in 20-9-316 through 20-9-321 by totaling:

(i) the district's nonisolated school foundation program requirement to be met by a district levy as provided in 20-9-303;

(ii) the district's permissive levy amount as provided in 20-9-352; and

(iii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-353, including any additional levies authorized by the electors of the district.

(b) Determine the total of the moneys available for the reduction of the property tax on the district for the general fund by totaling:

(i) anticipated federal moneys received under the provisions of Title I of Public Law 81-874 or other anticipated federal moneys received in lieu of such federal act;

(ii) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-303, 20-5-307, 20-5-312, and 20-5-313;

(iii) general fund cash reappropriated, as established under the provisions of 20-9-104;

(iv) anticipated or reappropriated state impact aid received under the provisions of 20-9-304;

(v) anticipated revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537;

(vi) anticipated net proceeds taxes for interim production and new production, as defined in 15-23-601;

(vii) anticipated interest to be earned or reappropriated interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(viii) any other revenue anticipated by the trustees to be received during the ensuing school fiscal year which may be used to finance the general fund.

(c) Subtract the total of the moneys available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from the total requirement determined in subsection (1)(a).

(2) The net general fund levy requirement determined in subsection (1)(c) shall be reported to the county commissioners on the second Monday of August by the county superintendent as the general fund levy requirement for the district, and a levy shall be made by the county commissioners in accordance with 20-9-142.

History: En. 75-6926 by Sec. 276, Ch. 5, L. 1971; R.C.M. 1947, 75-6926; amd. Sec. 1, Ch. 699, L. 1983; amd. Sec. 1, Ch. 110, L. 1985; amd. Sec. 1, Ch. 265, L. 1985; amd. Sec. 12, Ch. 695, L. 1985; amd. Sec. 15, Ch. 611, L. 1987; amd. Sec. 19, Ch. 655, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 611 in (1)(b)(v), after "anticipated", substituted remainder of subsection for "or reappropriated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536".

Chapter 655 in (1)(b)(vi), before "new production", inserted "interim production and".

Cross-References

Computation of revenues and net tax levy requirements for the transportation fund budget, 20-10-144.

20-9-142. Fixing and levying taxes by board of county commissioners. On the second Monday in August, the county superintendent shall place before the board of county commissioners the final adopted budget of the district and any emergency budget adopted by the district during the previous school fiscal year. It shall be the duty of the board of county commissioners to fix and levy on all the taxable value of all the real and personal property within the district all district and county taxation required to finance, within the limitations provided by law, the final budget and any emergency budget of the district.

History: En. 75-6717 by Sec. 223, Ch. 5, L. 1971; amd. Sec. 9, Ch. 277, L. 1977; R.C.M. 1947, 75-6717; amd. Sec. 3, Ch. 726, L. 1985; amd. Sec. 6, Ch. 26, Sp. L. June 1986.

Cross-References

Property tax levies, Title 15, ch. 10.

Tuition fund levy, 20-5-307.

Tuition fund levy to be made, 20-5-312.

Boundary change — effect on property tax valuation, 20-6-412.

Adult education fund levy, 20-7-705.

Bus depreciation reserve fund, 20-10-147.

Additional levy by school district — procedure, 20-16-207.

20-9-143. Allocation of federal funds in lieu of property taxation. Federal funds received by a district under the provisions of Title I of Public Law 81-874 or funds designated in lieu of such federal act by the congress of the United States may be allocated to the various operating budgets of the district by the trustees.

History: En. 75-6718 by Sec. 224, Ch. 5, L. 1971; R.C.M. 1947, 75-6718.

Cross-References

Power to accept gifts, 20-6-601.

Allocation of federal funds to school food service, 20-10-204, 20-10-205.

20-9-144 through 20-9-150 reserved.

20-9-151. Budgeting procedure for joint districts. (1) The trustees of a joint district shall adopt a budget according to the school budgeting laws and send a copy of such budget to the county superintendent of each county in which a part of the joint district is located. After approval by the trustees of the joint district the final budgets of joint districts shall be filed in the office of the county superintendent of each county in which a part of a joint district is located.

(2) The county superintendents receiving the budget of a joint district shall jointly compute the estimated budget revenues and determine the number of mills which need to be levied in the joint district for each fund for which a levy is to be made. The superintendent of public instruction shall establish a communication procedure to facilitate the joint estimation of revenues and determination of the tax levies.

(3) After determining, in accordance with law, the number of mills which need to be levied for each fund included on the final budget of the joint district, a joint statement of the required mill levies shall be prepared and signed by the county superintendents involved in the computation. A copy of the statement shall be delivered to the board of county commissioners of each county in which a part of the joint district is located not later than the Friday immediately preceding the second Monday in August.

History: Ap. p. 75-6721 by Sec. 227, Ch. 5, L. 1971; amd. Sec. 12, Ch. 277, L. 1977; Sec. 75-6721, R.C.M. 1947; Ap. p. 75-6720 by Sec. 226, Ch. 5, L. 1971; amd. Sec. 11, Ch. 277, L. 1977; Sec. 75-6720, R.C.M. 1947; R.C.M. 1947, 75-6720, 75-6721.

20-9-152. Fixing and levying taxes for joint districts. (1) At the time of fixing levies for county and school purposes on the second Monday in August, the board of county commissioners of each county in which a part of a joint district is located shall fix and levy taxes on that portion of the joint district located in such board's county at the number of mills for each such levy recommended by the joint statement of the county superintendents.

(2) The board of county commissioners shall include in the amounts to be raised by the county levies for schools all the amounts required for the final budget of each part of a joint district located in the county, in accordance with the recommendations of the county superintendent.

History: En. 75-6722 by Sec. 228, Ch. 5, L. 1971; R.C.M. 1947, 75-6722.

Cross-References

Property tax levies, Title 15, ch. 10.

20-9-153 through 20-9-160 reserved.

20-9-161. Definition of emergency for budgeting purposes. As used in this title, unless the context clearly indicates otherwise, the term "emergency" for the purpose of school budgeting shall be:

(1) an increase in the enrollment of an elementary or high school district over the immediately preceding school fiscal year which is beyond what could reasonably have been anticipated at the time of the adoption of the budget

for the then-current school fiscal year whenever, because of such enrollment increase, the district's budget for any or all of the regularly budgeted funds does not provide sufficient financing to properly maintain and support the district for the entire current school fiscal year;

(2) the destruction or impairment of any school property necessary to the maintenance of the school, by fire, flood, storm, riot, insurrection, or any act of God, to such an extent as to render such school property unfit for its present school use;

(3) a judgment for damages against the district rendered by a court after the adoption of the budget for the current year;

(4) an enactment of legislation after the adoption of the budget for the current year that imposes an additional financial obligation on the district; or

(5) any other reason of similar consequences that has been approved by the superintendent of public instruction upon petition by the trustees of the district or by the board of regents upon petition by the trustees of a community college district.

History: En. 75-6723 by Sec. 229, Ch. 5, L. 1971; R.C.M. 1947, 75-6723; amd. Sec. 19, Ch. 392, L. 1979.

Cross-References

Statutes imposing new duties on a school district to provide a means of financing, 1-2-113.

Liability exposure and insurance coverage, Title 2, ch. 9.

Disaster and emergency services, Title 10, ch. 3.

20-9-162. Authorization for emergency budget adoption. Emergency budgets may be adopted at any time of the school fiscal year, except that emergency budgets required by an enrollment increase that could not have been anticipated at the time of the adoption of the regular budget as provided in 20-9-161(1) may not be adopted until after December 31.

History: En. 75-6724 by Sec. 230, Ch. 5, L. 1971; R.C.M. 1947, 75-6724.

Cross-References

Emergency transportation fund budget, 20-10-143.

20-9-163. Resolution for emergency budget — petition to superintendent of public instruction or to the board of regents. (1) Whenever the trustees of any district decide that an emergency exists, they may adopt a resolution proclaiming such emergency by a unanimous vote of all members present at any meeting for which each trustee has been given reasonable notice of the time and place of holding such meeting. The emergency resolution shall also state the facts constituting the emergency, the estimated amount of money required to meet the emergency, the funds affected by the emergency, and the time and place when the board will meet for the purpose of considering and adopting an emergency budget for such funds for the current school fiscal year.

(2) If the trustees decide that an emergency exists for any reason other than the conditions specified in subsections (1), (2), (3), or (4) of 20-9-161, they shall petition the superintendent of public instruction or, in the case of a community college district, the board of regents for permission to adopt a resolution of emergency. Such petition shall set forth in writing the reasons for the request, the district funds affected by the emergency, the estimated amount of money required to meet such emergency for each affected fund, the

anticipated sources of financing for the emergency expenditures, and such other information as may be required by the superintendent of public instruction or the board of regents. The petition shall be signed by each trustee.

(3) The superintendent of public instruction or, in the case of a community college district, the board of regents shall promptly approve or disapprove the petition requesting approval to adopt a resolution of emergency. If the petition is approved, the trustees may then adopt a resolution of emergency and may subsequently take all other steps required for the adoption of an emergency budget. Approval of a petition by the superintendent of public instruction or the board of regents shall merely authorize the board of trustees to initiate emergency budget proceedings by resolution and shall not relieve the trustees of the necessity of complying with the requirements of the school emergency budgeting laws. Approval of the petition shall not be construed as approval of any subsequent application for increased state aid on account of such emergency.

History: En. 75-6725 by Sec. 231, Ch. 5, L. 1971; R.C.M. 1947, 75-6725; amd. Sec. 20, Ch. 392, L. 1979.

20-9-164. Notice of emergency budget resolution. A copy of the emergency resolution shall be published one time in a newspaper that will give notice to the largest number of people of the district as determined by the trustees, and a copy of the resolution shall be posted at each schoolhouse of the district. A copy of the emergency resolution shall also be delivered to the county superintendent and to the county clerk as the clerk of the board of county commissioners of the county. The publication, posting, and delivery of the resolution shall be done not less than 1 week before the day specified in the resolution for the consideration and adoption of an emergency budget.

History: En. 75-6726 by Sec. 232, Ch. 5, L. 1971; R.C.M. 1947, 75-6726.

20-9-165. Emergency budget limitation, preparation, and adoption procedures. (1) The meeting of the trustees to consider and adopt an emergency budget shall be open to the public, and any taxpayer in the district shall have the right to appear and be heard. If at such a meeting a majority of the trustees present shall find that an emergency exists, the trustees may make and adopt a preliminary emergency budget, on the regular budget form, setting forth fully the facts constituting the emergency. In adopting the preliminary emergency budget, the trustees may budget for any fund which was included on the final budget of the district for the current school fiscal year. The budget shall be itemized to show the amount appropriated for each item as required on the budget form.

(2) When the emergency is due to any increase of enrollment, the maximum amount of the emergency budget for all funds shall be determined in the following manner:

(a) Determine the total amount in the final budget for the current school fiscal year of all funds affected by the emergency, less any amounts appropriated as capital outlay and any amount appropriated for addition to the cash reserve.

(b) Divide the amount determined in subsection (2)(a) by the number of pupils originally enrolled in such district during the immediately preceding school fiscal year. The resulting cost per pupil shall constitute the maximum permissible per-pupil expenditure in the emergency budget.

(c) Determine the enrollment increase of the current school fiscal year by subtracting the number of pupils originally enrolled during the immediately preceding school fiscal year from the number of pupils enrolled for the current school year. The result shall be the enrollment increase for the current school fiscal year.

(d) Multiply the cost per pupil determined in subsection (2)(b) by the enrollment increase determined in subsection (2)(c). The result shall be the maximum limitation on an emergency budget for emergencies due to an increase of enrollment.

(e) In the case of a community college district, by budget amendment.

(3) In the event of any other type of emergency, the budget shall be limited by those expenditures deemed by the trustees to be reasonable and necessary to finance the stated conditions of the emergency and the preliminary emergency budget shall be accompanied with the details of the proposed expenditures.

(4) Whenever the trustees adopt a preliminary emergency budget for the transportation fund, the trustees shall attach to such budget a copy of each transportation contract which is connected with the emergency and which has been prepared and executed in accordance with the school transportation contract laws.

(5) After the trustees have adopted the emergency budget by a majority vote of the trustees, it shall be signed by the chairman of the trustees and the clerk of the district and copies shall be sent to the county superintendent, the county treasurer, and the superintendent of public instruction. In the case of a community college district, copies of the emergency budget shall be sent to the county superintendent, the county treasurer, and the board of regents.

History: En. 75-6727 by Sec. 233, Ch. 5, L. 1971; amd. Sec. 13, Ch. 277, L. 1977; R.C.M. 1947, 75-6727; amd. Sec. 21, Ch. 392, L. 1979; amd. Sec. 69, Ch. 370, L. 1987.

Compiler's Comments

1987 Amendment: At end of (2)(e) deleted "in accordance with 20-15-302".

Cross-References

Open meetings, Title 2, ch. 3, part 2.
School fiscal year, 20-1-301.
Meetings and quorum, 20-3-322.

20-9-166. State financial aid for emergency budgets. Whenever a final emergency budget has been adopted for the general fund or the transportation fund to finance the cost of an emergency due to an increased enrollment or any other reason approved by the superintendent of public instruction under the provisions of 20-9-163, the trustees may apply to the superintendent of public instruction for an increased payment from the state public school equalization aid account for the foundation program or for state transportation reimbursement, or both. The superintendent of public instruction shall publish rules for such application. The superintendent of public instruction shall approve or disapprove each application for increased state aid made in accordance with this section. When the superintendent of public instruction approves an application, he shall determine the additional amount of state aid from the state public school equalization aid account or the state transportation reimbursement which will be made available to the applicant district because of the emergency caused by an increase in enrollment. The superintendent of public instruction shall notify the applicant district of his approval or disapproval and, in the event of approval, the amount of additional state aid that will be made available for the general fund or the transportation fund. The superintendent of public instruction shall disburse such emergency state aid to the eligible district at the time the next regular state aid payment is made.

History: **En. 75-6729 by Sec. 235, Ch. 5, L. 1971; R.C.M. 1947, 75-6729.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

State transportation reimbursement, 20-10-145.

20-9-167. Determination of available financing — fixing and levying property taxation for an emergency budget. (1) After the last day of the school fiscal year for which an emergency budget has been adopted, the county treasurer shall determine the amount of the cash balance that is available to finance the emergency budget's outstanding warrants or registered warrants for each fund included on the emergency budget. The available amount of the cash balance of each fund shall be determined by deducting from the county treasurer's year-end cash balance for such fund the outstanding or registered warrants issued under the regularly adopted final budget for such fund and the cash reserve for such fund which the trustees have established, within the limitations of law, for the following school fiscal year.

(2) The county treasurer shall prepare and deliver a statement on the financial status of each fund included on an emergency budget for a district having such a budget during the preceding year to the board of county commissioners by the first Monday in August. Such statement for each district emergency budget shall include:

(a) the total amount of the issued emergency warrants that are outstanding or registered against each fund of the district;

(b) the amount of the cash balance in each fund included on the emergency budget which is available to finance such outstanding or registered warrants; and

(c) after consideration of the available money in subsection (2)(b), the additional amount of money which is required to finance the outstanding warrants or registered warrants and interest on such warrants and which must be raised by a tax levy.

(3) For each fund of the emergency budget of each district requiring a tax levy as established by subsection (2)(c) of the county treasurer's statement, the board of county commissioners shall, at the time all other district and county taxes are fixed and levied, levy a tax on the taxable property of each applicable district that will raise sufficient financing to pay the amount established by the county treasurer.

History: **En. 75-6730 by Sec. 236, Ch. 5, L. 1971; R.C.M. 1947, 75-6730.**

Cross-References

Duties of County Treasurer, 7-6-2111.

Property tax levies, Title 15, ch. 10.

Part 2

Administration of Finances

Part Cross-References

Management of school money, Title 7, ch. 6, part 28.

Duty of Superintendent of Public Instruction to supervise school financial administration, 20-3-106.

Duty of trustees to conduct financial business of district, 20-3-324.

20-9-201. Definitions and application. (1) As used in this title, unless the context clearly indicates otherwise, "fund" means a separate detailed account of receipts and expenditures for a specific purpose as authorized by law. Funds are classified as follows:

(a) A "budgeted fund" means any fund for which a budget must be adopted in order to expend any money from such fund. The general fund, transportation fund, bus depreciation reserve fund, elementary tuition fund, retirement fund, debt service fund, leased facilities fund, building reserve fund, adult education fund, nonoperating fund, vocational-technical center fund, and any other funds so designated by the legislature shall be budgeted funds.

(b) A "nonbudgeted fund" means any fund for which a budget is not required in order to expend any money on deposit in such fund. The school food services fund, miscellaneous federal programs fund, building fund, lease or rental agreement fund, traffic education fund, interlocal cooperative fund, and any other funds so designated by the legislature shall be nonbudgeted funds.

(2) The school financial administration provisions of this title apply to all money of any elementary or high school district except the extracurricular money realized from pupil activities. The superintendent of public instruction has general supervisory authority over the school financial administration provisions, as they relate to elementary and high school districts, as prescribed by law and shall establish such rules as are necessary to secure compliance with the law.

History: (1)En. Sec. 237, Ch. 5, L. 1971; amd. Sec. 1, Ch. 424, L. 1977; Sec. 75-6801, R.C.M. 1947; (2)En. Sec. 238, Ch. 5, L. 1971; amd. Sec. 16, Ch. 266, L. 1977; Sec. 75-6802, R.C.M. 1947; R.C.M. 1947, 75-6801, 75-6802; amd. Sec. 22, Ch. 392, L. 1979; amd. Sec. 3, Ch. 135, L. 1987; amd. Sec. 34, Ch. 658, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 135 in (1)(b) changed fund name from "housing and dormitory fund" to "lease or rental agreement fund".

Chapter 658 in (1)(a), before "vocational-technical", deleted "postsecondary".

Cross-References

Appropriation for sectarian purpose prohibited, Art. V, sec. 11, Mont. Const.

Public school fund, Art. X, sec. 5, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Adult education fund, 20-7-705.

Transportation fund budget required, 20-10-143.

School food services fund a nonbudgeted fund, 20-10-207.

Vocational-technical center fund, 20-16-204.

20-9-202. County officials for financial administration when joint district. (1) When all of the schools of the joint district are located in one county, the school financial administration duties assigned to county officials shall be performed by those officials of the county wherein the schools of the district are located. When the schools of a joint district are located in more than one county, the superintendent of public instruction shall designate the county officials to perform such duties for the joint district.

(2) The designated county treasurer shall be the custodian of all joint district moneys and shall perform all other duties of the county treasurer for the joint district. The superintendent of public instruction shall disburse all moneys for a joint district to such county treasurer.

History: En. 75-6803 by Sec. 239, Ch. 5, L. 1971; amd. Sec. 14, Ch. 277, L. 1977; R.C.M. 1947, 75-6803.

Cross-References

Duties of County Treasurer, 7-6-2111.

20-9-203. Examination of district accounting records. (1) The accounting records of all first- and second-class school districts and third-class school districts that maintain a high school shall be audited in accordance with 2-7-503.

(2) Annually and at such other times as directed by the board of county commissioners or trustees, the county auditor or the county treasurer if there is no county auditor shall audit the accounting records of each third-class district that does not maintain a high school. Such district shall deliver all accounting records to the auditing county official no later than July 15 for the audit of the financial activity of the last completed school fiscal year. The auditing county official shall examine the accounting records, prepare an audit report, and:

(a) return the accounting records to the district no later than August 15;

(b) send a copy of the audit report to the chairman of the trustees; and

(c) file copies of the audit report with the superintendent of public instruction, the county superintendent, and the county clerk and recorder.

History: En. 75-6807 by Sec. 243, Ch. 5, L. 1971; amd. Sec. 17, Ch. 266, L. 1977; R.C.M. 1947, 75-6807; amd. Sec. 2, Ch. 336, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 5, Ch. 573, L. 1981; amd. Sec. 1, Ch. 115, L. 1985.

Cross-References

Duties of County Auditor, 7-6-2407 through 7-6-2412.

20-9-204. Conflicts of interests, letting contracts, and calling for bids. (1) It is unlawful for any trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by him in his official capacity or by the board of trustees of which he is a member; or

(b) be employed in any capacity by the school district of which he is trustee.

(2) For the purposes of subsection (1):

(a) "pecuniary interest" does not include holding an interest of 10% or less in a corporation;

(b) "contract" does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions which are in the business of loaning or receiving money when such investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services other than salaried services or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of such lack of availability are entered in the minutes of the board meeting at which the contract is considered.

(3) Whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of $7,500, the work done or the purchase made shall

be by contract. Each such contract must be let to the lowest responsible bidder after advertisement for bids. Such advertisement shall be published in the newspaper which will give notice to the largest number of people of the district as determined by the trustees. Such advertisement shall be made once each week for 2 consecutive weeks and the second publication shall be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section shall be void.

(4) Whenever bidding is required, the trustees shall award the contract to the lowest responsible bidder, except that the trustees may reject any or all bids.

(5) Nothing in this section shall require the board of trustees to let a contract for any routine and regularly performed maintenance or repair project or service which can be accomplished by district staff whose regular employment with such school district is related to the routine performance of maintenance for such district.

History: En. 75-6808 by Sec. 244, Ch. 5, L. 1971; amd. Sec. 1, Ch. 42, L. 1971; amd. Sec. 1, Ch. 149, L. 1973; amd. Sec. 18, Ch. 266, L. 1977; R.C.M. 1947, 75-6808; amd. Sec. 1, Ch. 314, L. 1979; amd. Sec. 23, Ch. 392, L. 1979; amd. Sec. 1, Ch. 452, L. 1983.

Cross-References

Code of Ethics, Title 2, ch. 2, part 1.
Preference to Montana contractors, 18-1-102.
Preference to Montana materials, 18-1-112.
Security to accompany bids, 18-1-203.
Preference to Montana labor, 18-2-403.
Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.
School officers not to act as agents, 20-1-201.
Conflict of interest, 20-1-205.
Penalty for violation of school laws, 20-1-207.
Letting contracts for school facilities, 20-6-606.
School bus purchase — contract — bids, 20-10-110.
Transportation contract — bid letting, 20-10-125.

20-9-205. Prohibition on division of contracts to circumvent bid requirements. (1) Whenever any law of this state provides a limitation upon the amount of money that a school district can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a school district shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder which by its nature or character is integral to such public work or construction project, or serves to accomplish one of the basic purposes or functions thereof, into several contracts, separate work orders, or by any similar device.

(2) This section shall apply not only where the public work or construction project is divided into several projects which are constructed at approximately the same period of time but also where the public work or construction project is divided into several projects which are constructed in different time periods or over an extended period of time.

History: En. Sec. 2, Ch. 149, L. 1973; R.C.M. 1947, 75-6808.1.

20-9-206. Entering appropriations on accounting records of county treasurer. (1) When the county treasurer receives the final budgets of the districts from the county superintendent, he shall open a fund for each budgeted fund included on the final budget of each district by entering the amount appropriated for the fund on his accounting record.

(2) Whenever the county treasurer receives a final emergency budget for a district from the county superintendent, he shall increase the amount of the

regularly adopted final budget by the amount of the emergency budgeted fund included on the final emergency budget.

History: En. 75-6809 by Sec. 245, Ch. 5, L. 1971; amd. Sec. 1, Ch. 241, L. 1973; R.C.M. 1947, 75-6809.

Cross-References

Duties of County Treasurer, 7-6-2111.

20-9-207. Documentation of expenditures. (1) The expenditure of district moneys, other than employee contract payments, may be authorized by the trustees when:

(a) payee-signed claims, wherein the payee attests to the accuracy of the claim and that he has not received the claimed amount, have been issued to the district; or

(b) the payee has provided the district with an invoice or other document identifying the quantity and total cost per item included on the invoice.

(2) The intention of this section is to provide sufficient documentation for each expenditure of district moneys.

History: En. Sec. 1, Ch. 366, L. 1973; R.C.M. 1947, 75-6809.1.

Cross-References

Claims and actions against political subdivisions, Title 2, ch. 9, part 3.

20-9-208. Transfer among appropriation items of a fund. (1) Whenever it appears to the trustees of any district that the appropriated amount of any item of a budgeted fund of the final budget or the emergency budget is in excess of the amount actually required during the school fiscal year for such appropriation item, the trustees may transfer any or all of the excess appropriation amount to any other appropriation item of the same budgeted fund.

(2) Such transfers shall not be made between different funds of the same district or between similar funds of different districts except as specifically provided by this title. The trustees shall enter the authorized transfers upon the permanent records of the district.

History: En. 75-6812 by Sec. 248, Ch. 5, L. 1971; amd. Sec. 4, Ch. 241, L. 1973; R.C.M. 1947, 75-6812.

Cross-References

School fiscal year, 20-1-301.

20-9-209. Lapse of budgeted appropriations and provision for unpaid claims. (1) All appropriations for a budgeted fund in the regular or emergency budget for a given school fiscal year shall lapse on the last day of such school fiscal year except the appropriations for:

(a) uncompleted improvements in progress of construction; and

(b) any obligation for the purchase of personal property ordered but not paid for during the current fiscal year and recorded with the county treasurer in the manner and on forms prescribed by the superintendent of public instruction.

(2) Any lawful claim presented to the district for payment under a lapsed appropriation shall be an obligation of the budget for the next ensuing school fiscal year.

History: En. 75-6813 by Sec. 249, Ch. 5, L. 1971; R.C.M. 1947, 75-6813; amd. Sec. 1, Ch. 478, L. 1983.

Cross-References
School fiscal year, 20-1-301.

20-9-210. Expenditure limitation and cash retention of nonbudgeted fund. The expenditure limitation, at any time during the school fiscal year, for a nonbudgeted fund shall be the amount of cash balance of such nonbudgeted fund. The cash balance of a nonbudgeted fund shall remain to the credit of such nonbudgeted fund from year to year unless a transfer is specifically authorized by this title.

History: **En. 75-6814 by Sec. 250, Ch. 5, L. 1971; R.C.M. 1947, 75-6814.**

20-9-211. Annual financial report of county superintendent. No later than September 1 of each school fiscal year, the county superintendent shall report to the superintendent of public instruction the financial activity during the preceding school fiscal year of each district of the county in accordance with the reporting requirements prescribed by the superintendent of public instruction. Such reports shall be prepared on forms provided by the superintendent of public instruction.

History: **En. 75-6804 by Sec. 240, Ch. 5, L. 1971; R.C.M. 1947, 75-6804.**

Cross-References
School fiscal year, 20-1-301.

20-9-212. Duties of county treasurer. The county treasurer of each county shall:

(1) receive and hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts which are entitled to a portion of such money according to the apportionments ordered by the county superintendent. A separate accounting shall be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax in support of the elementary foundation programs;

(b) the basic special tax for high schools in support of the high school foundation programs;

(c) the county tax in support of the county's high school transportation obligation;

(d) the county tax in support of the high school obligations to the retirement systems of the state of Montana;

(e) any additional county tax required by law to provide for deficiency financing of the elementary foundation programs;

(f) any additional county tax required by law to provide for deficiency financing of the high school foundation programs; and

(g) any other county tax for schools, including the community colleges, which may be authorized by law and levied by the county commissioners;

(2) whenever requested, notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) of this section and the amount of any other school money subject to apportionment and apportion such county and other school money to the districts in accordance with the apportionment ordered by the county superintendent;

(3) keep a separate accounting of the expenditures for each budgeted fund included in the final budget of each district;

(4) keep a separate accounting of the receipts, expenditures, and cash balances for each budgeted fund included in the final budget of each district and for each nonbudgeted fund established by each district;

(5) except as otherwise limited by law, pay all warrants properly drawn on the county or district school money and properly endorsed by their holders;

(6) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law or by the district if no fund is designated by law. Interest and penalties on delinquent school taxes shall be credited to the same fund and district for which the original taxes were levied.

(7) send all revenues received for a joint district, part of which is situated in his county, to the county treasurer designated as the custodian of such revenues, no later than December 15 of each year and every 3 months thereafter until the end of the school fiscal year;

(8) at the direction of the trustees of a district, assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(9) register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in the sum of money in all funds of the district to make payment of such warrant. Redemption of registered warrants shall be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(10) invest the money of any district as directed by the trustees of the district within 3 working days of such direction;

(11) give each month to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, outstanding warrants, registered warrants, amounts and types of revenue received, and the cash balance; and

(12) remit promptly to the state treasurer receipts for the county tax for a vocational-technical center when levied by the board of county commissioners.

History: En. 75-6805 by Sec. 241, Ch. 5, L. 1971; amd. Sec. 5, Ch. 241, L. 1973; amd. Sec. 3, Ch. 304, L. 1975; amd. Sec. 1, Ch. 180, L. 1977; amd. Sec. 1, Ch. 291, L. 1977; R.C.M. 1947, 75-6805; amd. Sec. 24, Ch. 392, L. 1979; amd. Sec. 5, Ch. 682, L. 1979; amd. Sec. 1, Ch. 234, L. 1983; amd. Sec. 1, Ch. 438, L. 1985; amd. Sec. 12, Ch. 481, L. 1985; amd. Sec. 34, Ch. 658, L. 1987.

Compiler's Comments

1987 Amendment: Before "vocational-technical" deleted "postsecondary".

Cross-References

Duties of County Treasurer, 7-6-2111.
Management of school funds, 7-6-2801.
Teachers' retirement, Title 19, ch. 4.
School fiscal year, 20-1-301.
School buses and transportation, Title 20, ch. 10, part 1.
Vocational-technical center funding, 20-16-204.

20-9-213. Duties of trustees. The trustees of each district shall have the sole power and authority to transact all fiscal business and execute all contracts in the name of such district. No person other than the trustees acting as a governing board shall have the authority to expend moneys of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school moneys for each fund maintained by the district in accordance with rules prescribed by the superintendent of public instruction. The record of such accounting shall be open to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district moneys and cause warrants to be issued for the payment of lawful obligations;

(3) have the authority to issue warrants on any budgeted fund in anticipation of budgeted revenues, except that such expenditures shall not exceed the amount budgeted for such fund;

(4) invest any moneys of the district, whenever in the judgment of the trustees such investment would be advantageous to the district, by directing the county treasurer to invest any money of the district in direct obligations of the United States government, payable within 180 days from the time of investment, or in savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC, FSLIC, or NCUA located in the state. All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds shall be credited to the debt service fund or the building fund, at the discretion of the board of trustees. The placement of the investment by the county treasurer shall not be subject to ratable distribution laws and shall be done in accordance with the directive from the board of trustees. A district may invest moneys under the state unified investment program established in Title 17, chapter 6.

(5) report annually to the county superintendent, not later than August 1, the financial activities of each fund maintained by the district during the last completed school fiscal year on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts shall be submitted to the county superintendent of each county in which part of the joint district is situated.

(6) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

(7) cause the accounting records of the district to be audited annually as required by law; and

(8) perform, in the manner permitted by law, such other fiscal duties that are in the best interests of the district.

History: En. 75-6806 by Sec. 242, Ch. 5, L. 1971; amd. Sec. 7, Ch. 137, L. 1973; amd. Sec. 2, Ch. 366, L. 1973; amd. Sec. 4, Ch. 304, L. 1975; R.C.M. 1947, 75-6806; amd. Sec. 1, Ch. 45, L. 1981; amd. Sec. 16, Ch. 421, L. 1985; amd. Sec. 1, Ch. 428, L. 1987.

Compiler's Comments

1987 Amendment: At end of first sentence in (4) substituted "state" for "county in which the district is located; provided, however, that if no such bank, building and loan association, savings and loan association, or credit union is located in the county where the district is situated, such investment may be made in said banks or associations located in adjacent counties".

Cross-References

Investment of proceeds arising from sale of county high school construction bonds, 7-6-2802.

Investment of certain construction bond proceeds, 7-7-2112.

Authority to request, accept, and disburse money, 20-3-208.

Duties of trustees, 20-3-324.

Trustees' authority to acquire property by lease-purchase agreement, 20-6-609.

20-9-214. Fees. (1) The trustees of any district may:

(a) require pupils in the commercial, industrial arts, music, domestic science, scientific, or agricultural courses to pay reasonable fees to cover the actual cost of breakage and of excessive supplies used; and

(b) charge pupils a reasonable fee for any course or activity not reasonably related to a recognized academic and educational goal of the district or any course or activity held outside normal school functions. The trustees may waive the fee in cases of financial hardship.

(2) The fees collected pursuant to subsection (1) shall be deposited in a nonbudgeted fund as provided in 20-9-210.

History: **En. 75-6322 by Sec. 135, Ch. 5, L. 1971; R.C.M. 1947, 75-6322; amd. Sec. 1, Ch. 486, L. 1985.**

20-9-215. Destruction of certain financial records. Any claim, warrant, voucher, bond, or treasurer's general receipt may be destroyed by any county or school district officer after a period of 5 years.

History: **En. Sec. 4, Ch. 92, L. 1935; re-en. Sec. 455.4, R.C.M. 1935; amd. Sec. 12, Ch. 189, L. 1953; amd. Sec. 1, Ch. 90, L. 1963; amd. Sec. 1, Ch. 95, L. 1967; R.C.M. 1947, 59-516; amd. Sec. 5, Ch. 384, L. 1979; amd. Sec. 3, Ch. 543, L. 1983.**

Cross-References

Destruction of old records by officer, 20-1-212.

20-9-216 through 20-9-219 reserved.

20-9-220. Clearing accounts. (1) A clearing account may be used by a school district for bookkeeping purposes if:

(a) all funds from the account are disbursed through issuance of warrants as provided in 20-9-221;

(b) records are kept showing the source and use of the funds that passed through the account; and

(c) the balance in the account is no greater than the amount necessary to cover outstanding warrants written against the account.

(2) An elementary school district and a high school district that are unified may use the same clearing account if the account is maintained in accordance with rules adopted by the superintendent of public instruction.

(3) Nothing in this section may be construed to allow the use of funds for any purpose or in any manner other than that expressly authorized in this title.

History: **En. Sec. 1, Ch. 263, L. 1987.**

20-9-221. Procedure for issuance of warrants. (1) The trustees of each district shall issue all warrants, and the warrants shall identify:

(a) the budgeted fund or nonbudgeted fund on which the warrant is drawn;

(b) the appropriation item of the budgeted fund or the type of expenditure for a nonbudgeted fund on which the warrant is drawn; and

(c) the warrant as an emergency warrant if it is drawn on an emergency budget.

(2) Any warrant issued by a district shall be countersigned by the chairman of the trustees and the clerk of the district before the warrant shall be negotiable. Facsimile signatures may be used in accordance with the provisions of 2-16-114. A facsimile signature device used under authority of this section must not be available to the other countersigner of the warrant, or the device must have a nonresettable metering control that can provide a positive

reconciliation between the number of warrants issued and the number of signatures applied. Either split signature plates or a double signature plate may be used according to the requirements of the district. The signature plates and the device keys must be kept secure by the district clerk under the supervision of the board of trustees of the district.

(3) The trustees shall issue warrants in single copy or in triplicate copy. When the warrants are issued in single copy, the trustees shall immediately provide a listing of the issued warrants on a fund-by-fund basis to the county treasurer and retain a copy of the listing in the district accounting records. When the warrants are issued in triplicate, the original copy of the warrant shall be delivered to the payee, the duplicate shall be sent immediately to the county treasurer, and the triplicate shall be retained by the district for accounting record purposes. The duplicate and triplicate copies shall be identified on the face of the warrant as "Not Negotiable—Copy of Original".

(4) However, the trustees may elect to issue warrants in payment of wages and salaries on a direct deposit basis to the employee's account in a local bank, provided the consent of the employee has been obtained and the employee is given an itemized statement of payroll deductions for each pay period.

History: En. 75-6810 by Sec. 246, Ch. 5, L. 1971; amd. Sec. 1, Ch. 341, L. 1971; amd. Sec. 2, Ch. 241, L. 1973; R.C.M. 1947, 75-6810; amd. Sec. 1, Ch. 279, L. 1979.

Cross-References

County warrants, Title 7, ch. 6, part 26.

20-9-222. Recording and payment of warrants by county treasurer. (1) Immediately after receiving a duplicate warrant or a warrant listing from a district, the county treasurer shall enter the amount and number of such warrant on his accounting records under the fund identified on such warrant or listing. The recording of the warrants shall allow for the computation of the unexpended amount of a budgeted fund from the accounting records.

(2) Whenever it appears to the county treasurer that a budgeted fund is so nearly exhausted that the issuance of another warrant will cause the overexpenditure of such budget, the county treasurer shall immediately notify the appropriate district of the expended condition of the budget and the district shall not issue another warrant against such fund that would overexpend the budget.

(3) After receiving a duplicate warrant or warrant listing that contains a warrant which will exceed the unexpended balance of a budgeted fund, the county treasurer shall immediately notify the district of such overdraft. If the district has not corrected the overdraft before the presentation of the warrant for payment, the county treasurer shall refuse to pay or register such warrant and shall endorse across the face of such warrant "Payment and Registration Refused, Insufficient Budget" and return the warrant to the person presenting it for payment.

(4) Whenever a warrant will overexpend the cash balance of a nonbudgeted fund, the county treasurer shall refuse to pay or register such warrant and shall endorse across the face of such warrant "Payment and Registration Refused, Insufficient Funds" and return the warrant to the person presenting

it for payment. The county treasurer shall immediately notify the district of such refusal to pay or register the warrant drawn on a nonbudgeted fund.

History: En. 75-6811 by Sec. 247, Ch. 5, L. 1971; amd. Sec. 3, Ch. 241, L. 1973; R.C.M. 1947, 75-6811.

Cross-References

Duties of County Treasurer, 7-6-2111.

County warrants, Title 7, ch. 6, part 26.

Management of school funds, 7-6-2801.

20-9-223. Cancellation of outstanding warrants — duplication. The trustees of any school district shall be authorized to cancel any warrant that has been issued for at least 1 year. However, the contractual obligation of the district that has been satisfied by the issuance of the warrant shall not be terminated until the time specified by 27-2-202(1) has elapsed. When a warrant has been cancelled and the obligation has not terminated under 27-2-202(1), the district may issue a duplicate warrant without the completion of an indemnity bond by the payee.

History: En. Sec. 1, Ch. 365, L. 1973; R.C.M. 1947, 75-6811.1.

20-9-224. Credit of refund — refund of revenue not charged against spending authority. (1) Whenever a school district deposits with the county treasurer a refund or rebate, the county treasurer shall credit the budgeted fund to which it is deposited and restore the school district's spending authority in that fund in the amount of the refund or rebate.

(2) A refund of revenue previously received by a school district shall not be charged against a school district's spending authority.

History: En. 75-6811.2 by Sec. 1, Ch. 329, L. 1977; R.C.M. 1947, 75-6811.2; amd. Sec. 1, Ch. 83, L. 1979.

Cross-References

Duties of County Treasurer, 7-6-2111.

20-9-225. Definitions relating to interest assessment. As used in 20-9-226 and 20-9-227, the following definitions apply:

(1) "Services" means the furnishing of labor, time, or effort, including construction services, purchased or contracted for by a school district.

(2) "Supplies" means all personal property purchased, leased, or contracted for by a school district, including leases of equipment. The term also includes leases of buildings or other real property by a school district.

History: En. Sec. 4, Ch. 413, L. 1985.

20-9-226. Interest assessed on amounts due. (1) Except as provided in 20-9-227, a school district shall pay simple interest at the rate of 0.05% each day on amounts due for supplies and services received if the district fails to make timely payment.

(2) For purposes of this section, payment is timely if a warrant is mailed or is otherwise made available to the payee when due and for the amount specified in the applicable contract or agreement. If no date is specified in the applicable contract or agreement, payment is timely if paid within 45 days after receipt of a properly completed invoice, addressed to the payer school district, or receipt of the supplies or services by the school district, whichever is later.

History: En. Sec. 5, Ch. 413, L. 1985.

20-9-227. Exemptions from interest assessment. Section 20-9-226 does not apply to the following:

(1) third-class school districts where the board of trustees does not meet monthly;

(2) interdistrict or intergovernmental transactions;

(3) claims subject to a good faith dispute;

(4) delinquencies due to natural disasters, disruptions in postal or delivery service, work stoppage due to labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the district;

(5) contracts entered into before October 1, 1985; or

(6) wages due and payable to school district employees or payments from any retirement system created pursuant to Title 19.

History: En. Sec. 6, Ch. 413, L. 1985.

Part 3

Equalization Aid

Part Cross-References

ANB defined, 20-1-101.

School fiscal year, 20-1-301.

Definition of various schools, 20-6-501.

20-9-301. Purpose and definition of foundation program and general fund. (1) A uniform system of free public schools sufficient for the education of and open to all school age children of the state shall be established and maintained throughout the state of Montana. The state shall aid in the support of its several school districts on the basis of their financial need as measured by the foundation program and in the manner established in this title.

(2) The principal budgetary vehicle for achieving the minimum financing as established by the foundation program shall be the general fund of the district. The purpose of the general fund shall be to finance those general maintenance and operational costs of a district not financed by other funds established for special purposes in this title.

(3) The amount of the general fund budget for each school fiscal year shall not exceed the financing limitations established by this title but shall be no less than the amount established by law as the foundation program. The general fund budget shall be financed by the foundation program revenues and may be supplemented by the permissive levy and additional voted levies in the manner provided by law.

History: En. 75-6901 by Sec. 251, Ch. 5, L. 1971; R.C.M. 1947, 75-6901.

Cross-References

Legislature to provide for free public education, Art. X, sec. 1, Mont. Const.

20-9-302. School isolation. (1) The trustees of any district operating an elementary school of less than 10 ANB or a high school of less than 25 ANB for 2 consecutive years shall apply to have the school classified as an isolated school. The application shall be submitted by the trustees to the county superintendent by May 1 of the second consecutive year that enrollment falls below the amount specified in this subsection. Such application shall include:

(a) the name of each pupil who will attend the school during the ensuing school fiscal year with the distance the pupil resides from the nearest county road or highway;

(b) a description of conditions affecting transportation such as poor roads, mountains, rivers, or other obstacles to travel, the distance the school is from the nearest open school having room and facilities for the pupils of such school, or any other condition that would result in an unusual hardship to the pupils of the school if they were transported to another school; and

(c) any other information prescribed by the superintendent of public instruction.

(2) The county superintendent shall submit the applications to the board of county commissioners (budget board) for their consideration on or before May 15. The budget board shall approve or disapprove the application on the basis of the criteria established by the superintendent of public instruction. The budget board also may approve an application because of the existence of other conditions which would result in an unusual hardship to the pupils of such school if they were transported to another school.

(3) When an application is approved, the county superintendent shall submit such application to the superintendent of public instruction before June 1. The superintendent of public instruction shall approve or disapprove such application for isolated classification by the fourth Monday of June on the basis of the information supplied by the application or objective information the superintendent of public instruction may collect on his own initiative. No elementary or high school shall be considered an isolated school until the approval of the superintendent of public instruction has been received.

History: En. 75-6608 by Sec. 206, Ch. 5, L. 1971; amd. Sec. 1, Ch. 212, L. 1973; R.C.M. 1947, 75-6608; amd. Sec. 1, Ch. 347, L. 1981.

Cross-References

Abandonment of elementary district, 20-6-209.

Abandonment of high school district, 20-6-307.

20-9-303. Definition of foundation program and its proportion of the maximum-general-fund-without-a-voted-levy schedule amount — nonisolated school foundation program financing — special education funds. (1) As used in this title, the term "foundation program" shall mean the minimum operating expenditures, as established herein, that are sufficient to provide for the educational program of a school. The foundation program relates only to those expenditures authorized by a district's general fund budget and shall not include expenditures from any other fund. It shall be financed by:

(a) county equalization moneys; and

(b) state equalization aid.

(2) The dollar amount of the foundation program shall be 80% of the maximum-general-fund-budget-without-a-voted-levy limitation as set forth in the schedules in 20-9-316 through 20-9-321. The foundation program of an elementary school having an ANB of nine or fewer pupils for 2 consecutive years which is not approved as an isolated school under the provisions of 20-9-302 shall be 80% of the schedule amount, but the county and state shall participate in financing one-half of the foundation program, and the district shall finance the remaining one-half by a tax levied on the property of the

district. When a school of nine or fewer pupils is approved as isolated under the provisions of 20-9-302, the county and state shall participate in the financing of the total amount of the foundation program.

(3) Funds provided to support the special education accounting budget may be expended only for special education purposes as approved by the superintendent of public instruction in accordance with the special education budgeting provisions of this title. Expenditures for special education shall be accounted for separately from the balance of the school district general fund. Transfers between items within the special education budget for accounting purposes may be made at the discretion of the board of trustees in accordance with the financial administration part of this title. The unexpended balance of the special education accounting budget shall carry over to the next year to reduce the amount of funding required to finance the district's ensuing year's maximum-budget-without-a-vote for special education.

History: En. 75-6906 by Sec. 256, Ch. 5, L. 1971; amd. Sec. 8, Ch. 137, L. 1973; amd. Sec. 2, Ch. 345, L. 1974; R.C.M. 1947, 75-6906; amd. Sec. 1, Ch. 317, L. 1981; amd. Sec. 2, Ch. 347, L. 1981.

Cross-References

Property tax levies, Title 15, ch. 10.

Elementary tuition rates, 20-5-305.

Accreditation and curriculum, Title 20, ch. 7, part 1.

Special education for exceptional children, Title 20, ch. 7, part 4.

Schedule of allowable costs for determining maximum-budget-without-a-vote, 20-7-431.

20-9-304. Eligibility for and payment of state impact aid. Any district which shall have children of employees of a public institution may be eligible for state impact aid under the following provisions:

(1) An "employee" means an employee of a public institution under the administration of the department of institutions, as defined in 53-1-202, or the department of family services, as defined in 2-15-2401, who resides on the property of such a public institution.

(2) A school district shall receive annually from moneys available for state equalization aid $150 for each elementary pupil and $250 for each high school pupil whose parents are employees of an institution located in the school district where the pupil attends school or in a school district which has a tuition agreement with the district where the pupil attends school.

(3) A district which is eligible for state impact aid shall apply for such aid to the superintendent of public instruction in the manner prescribed by the rules prescribed by the superintendent of public instruction.

(4) The distribution of state impact aid shall be deposited in the general fund of the district and shall not be considered as a part of the state equalization aid but shall be used to reduce the property tax in support of the general fund of the district.

History: En. 75-6925 by Sec. 275, Ch. 5, L. 1971; R.C.M. 1947, 75-6925; amd. Sec. 25, Ch. 609, L. 1987.

Compiler's Comments

1987 Amendment: In (1), after "53-1-202", inserted "or the department of family services, as defined in 2-15-2401".

20-9-305. Proration and calculation of foundation program for a joint district. (1) In joint districts, the foundation program shall be prorated among the counties in which any part of the joint district is located for the purpose of determining the amount of each source of revenue for the foundation program for which each county is obligated. The proration of the joint district foundation program shall be calculated as follows:

(a) Divide the joint district foundation program by the ANB of the joint district to determine the per-ANB amount of the foundation program.

(b) Determine the ANB for each county's portion of the joint district on the basis of each pupil's resident county. When taken together, the sum of the ANB assigned to all the counties shall equal the total ANB for the joint district.

(c) Multiply the per-ANB amount of the foundation program determined in subsection (1)(a) by the ANB for each county's portion as determined in subsection (1)(b) to determine the portion of the foundation program for each county.

(2) The portion of a joint district foundation program for each county, as determined in subsection (1)(c) of this section, shall be considered as a separate foundation program in such county for the purposes of calculating the various revenues for the foundation program. After the calculation of the foundation program revenues, the remainder of the general fund revenues shall be calculated in accordance with the provisions for general fund financing.

History: En. 75-6927 by Sec. 277, Ch. 5, L. 1971; amd. Sec. 13, Ch. 137, L. 1973; R.C.M. 1947, 75-6927.

Cross-References

District consolidation of two or more counties to organize joint elementary district, 20-6-208.

Procedure for organization of joint high school district, 20-6-309.

20-9-306 through 20-9-310 reserved.

20-9-311. Calculation of average number belonging (ANB). (1) Average number belonging shall be computed by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the current school fiscal year and by dividing such total by 180. However, when a school district has approval to operate less than 180 school days under 20-9-804, such total shall be calculated in accordance with the provisions of 20-9-805. Attendance for a part of a morning session or a part of an afternoon session by a pupil shall be counted as attendance for one-half day. In calculating the ANB for pupils enrolled in a program established under 20-7-117 prior to January 1, 1974, or pursuant to 20-7-117(1), attendance at or absence from a regular session of the program for at least 2 hours of either a morning or an afternoon session will be counted as one-half of a day attended or absent as the case may be. If a variance has been granted as provided in 20-1-302, ANB will be computed in a manner prescribed by the superintendent of public instruction, but in no case shall the ANB exceed one-half for each kindergarten pupil. When any pupil has been absent, with or without excuse, for more than 10 consecutive school days, including pupil-instruction-related days, his absence after the 10th day of absence shall not be included in the aggregate days of absence and his enrollment in the school shall not be considered in the calculation of the average number belonging until he resumes attendance at school.

(2) If a student spends less than half his time in the regular program and the balance of his time in school in the special education program, he shall be considered a full-time special pupil but shall not be considered regularly enrolled for ANB purposes. If a student spends half or more of his time in school in the regular program and the balance of his time in the special education program, he shall be considered regularly enrolled for ANB purposes.

(3) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) a school of the district is located more than 3 miles beyond the incorporated limits of a city or town or from another school of the district, all of the regularly enrolled, full-time pupils of the school must be calculated individually for ANB purposes;

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school shall be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, in which case pupils below the 7th grade shall be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils shall be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school shall not be eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the foundation program for such district.

(4) When 11th or 12th grade students are regularly enrolled on a part-time basis, high schools may calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an equivalent ANB shall be determined in a manner prescribed by the superintendent of public instruction.

History: En. 75-6902 by Sec. 252, Ch. 5, L. 1971; amd. Sec. 1, Ch. 345, L. 1973; amd. Sec. 1, Ch. 343, L. 1974; amd. Sec. 3, Ch. 352, L. 1974; amd. Sec. 1, Ch. 373, L. 1974; amd. Sec. 1, Ch. 132, L. 1975; R.C.M. 1947, 75-6902(part); amd. Sec. 8, Ch. 288, L. 1979; amd. Sec. 1, Ch. 498, L. 1987.

Compiler's Comments

1987 Amendment: Substituted present introductory clause of (3), (3)(a), and (3)(b) for former introductory clause of (3), (3)(a), and (3)(b) that read: "(3) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district shall be calculated individually for each school, except that when:

(a) more than one school of a district, other than a junior high school in an elementary district which has been approved and accredited as a junior high school, is located within the incorporated limits of a city or town, the average number belonging of such schools shall be based on the aggregate of all the regularly enrolled, full-time pupils attending such schools located within the incorporated limits of a city or town;

(b) a junior high school which has been approved and accredited as a junior high school is located within the incorporated limits of a city or town in which a high school is located, all of the regularly enrolled, full-time pupils of the junior high school shall be considered as high school district pupils for the purposes of calculating the average number belonging of the high schools located within the incorporated limits of such city or town".

Cross-References

School fiscal year, 20-1-301.

Released time for religious purposes to be counted as part of school day, 20-1-308.

Preschool program to be included in calculation of ANB, 20-7-117.

20-9-312. Maximum general fund budget for grades seven and eight. The ANB calculated for grades 7 and 8 shall be funded at the high school rate provided that the school meets the standards for accreditation of a middle school. When such pupils are actually enrolled in an elementary school, the amount of the general fund budget per ANB is determined from the high school schedule using the total ANB of the elementary school. To determine the total ANB of such an elementary school, the 7th and 8th grade pupils shall be included in such total.

History: En. 75-6905.1 by Sec. 1, Ch. 354, L. 1974; R.C.M. 1947, 75-6905.1; amd. Sec. 1, Ch. 340, L. 1979.

20-9-313. Circumstances under which the regular average number belonging may be increased. The average number belonging of a school for a given school fiscal year, calculated in accordance with the ANB formula prescribed in 20-9-311, may be increased when:

(1) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with 20-6-502. The average number belonging for such school shall be established by the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction.

(2) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with 20-6-503, 20-6-504, or 20-6-505. The average number belonging for such high school shall be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend such high school.

(3) a district anticipates an increase in the average number belonging due to the closing of any private or public school in the district or a neighboring district. The estimated increase in average number belonging shall be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June.

(4) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging shall be based on estimates of increased enrollment approved by the superintendent of public instruction and shall be computed in the manner prescribed by 20-9-314.

(5) for the initial year of operation of a program established under 20-7-117(1), the ANB to be used for budget purposes is the same as one-half the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction;

(6) a special full-time pupil, as defined in 20-9-311, in a given school year will no longer be considered a special full-time pupil in the ensuing school year (the superintendent of public instruction may grant one ANB for such pupil for the ensuing school year); or

(7) a high school district provides early graduation for any student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment or when a high school district provides early graduation for a class of students who have completed the

requirements for graduation after 175 pupil-instruction days in the 12th grade. The increase shall be established by the trustees as though the student had attended to the end of the school year and shall be approved, disapproved, or adjusted by the superintendent of public instruction.

History: En. 75-6903 by Sec. 253, Ch. 5, L. 1971; amd. Sec. 4, Ch. 345, L. 1973; amd. Sec. 2, Ch. 343, L. 1974; amd. Sec. 1, Ch. 141, L. 1975; R.C.M. 1947, 75-6903; amd. Sec. 4, Ch. 334, L. 1979; amd. Sec. 2, Ch. 148, L. 1981.

20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase. A district which anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in 20-9-313(4), may increase its foundation program for the ensuing school fiscal year in accordance with the following provisions:

(1) The district shall estimate the current year's average number belonging by totaling the aggregate days of attendance and aggregate days of absence realized in the district through April 30 and dividing such total by 180. The resulting average number belonging shall be increased by the ratio that the total number of planned school days in the current school fiscal year bears to the number of school days completed through April 30.

(2) Prior to May 10, the district shall estimate the probable average number belonging to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

(3) No later than May 10, the district shall submit its application for an unusual enrollment increase to the superintendent of public instruction. Such application shall include:

(a) the previous year's average number belonging;

(b) the estimate of the current school fiscal year's average number belonging, as provided in subsection (1) above;

(c) the estimated average number belonging for the ensuing school fiscal year, including the factual information on which the estimate is based, as provided in subsection (2) above; and

(d) any other information or data that may be requested by the superintendent of public instruction.

(4) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the estimated average number belonging for the ensuing school fiscal year. After approving an estimate, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage increase which the estimated average number belonging for the ensuing fiscal year is over the current year's average number belonging; and

(b) approve an increase of the average number belonging used to establish the ensuing year's foundation program in accordance with subsection (6) if the increase in subsection (4)(a) is at least 6%.

(5) The superintendent of public instruction shall notify the district of his decision by the fourth Monday in June.

(6) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the increase of the average number belonging used to establish the foundation program for the ensuing school fiscal year

shall be the difference between the approved estimated average number belonging for the ensuing school fiscal year and 106% of the current year's average number belonging. The amount so determined shall be the maximum allowable increase added to the actual average number belonging for the current school fiscal year for the purpose of establishing the ensuing year's foundation program.

(7) Any equalization or entitlement increases resulting from provisions of this section shall be reviewed at the end of the ensuing school fiscal year. If the actual average number belonging is less than the average number belonging used for foundation program and entitlement calculations, the superintendent of public instruction shall revise the foundation program and entitlement calculations using the actual average number belonging. All payments received by the district in excess of the revised entitlements shall be overpayments subject to the refund provisions of 20-9-344(3).

History: En. 75-6904 by Sec. 254, Ch. 5, L. 1971; amd. Sec. 1, Ch. 113, L. 1973; R.C.M. 1947, 75-6904; amd. Sec. 1, Ch. 484, L. 1979; amd. Sec. 1, Ch. 203, L. 1981.

20-9-315. Maximum general fund budget and exceptions. The total amount of the general fund budget of any district shall not be greater than the general fund budget amount specified in 20-9-316 through 20-9-321, except when a district has adopted an emergency general fund budget under the provisions of 20-9-165 or when a district satisfies the requirements of 20-9-353.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(part); amd. Sec. 1, Ch. 72, L. 1979.

20-9-316. Elementary school maximum budget schedule for 1985-86. (1) For each elementary school having an ANB of nine or fewer pupils, the maximum shall be $19,959 if said school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum shall be $19,959 plus $834.10 per pupil on the basis of the average number belonging over nine.

(3) For schools with an ANB of at least 14 pupils but less than 18 pupils that qualify for instructional aide funding under 20-9-322, the maximum shall be $32,714 plus $834.10 per pupil on the basis of the average number belonging over 14.

(4) For schools with an ANB of 18 pupils and employing one teacher, the maximum shall be $27,466 plus $834.10 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(5) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum shall be $43,851 plus $522.40 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(6) For schools having an ANB in excess of 40, the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

(a) For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of $1,938 shall be decreased at the rate of $1.88 for each additional pupil until the total number (ANB) shall have reached a total of 100 pupils.

(b) For a school having an ANB of more than 100 pupils, the maximum of $1,825 shall be decreased at the rate of $1.72 for each additional pupil until the ANB shall have reached 300 pupils.

(c) For a school having an ANB of more than 300 pupils, the maximum shall not exceed $1,481 for each pupil.

(7) The maximum per pupil for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All elementary schools operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(1) thru (6); amd. Sec. 1, Ch. 690, L. 1979; amd. Sec. 1, Ch. 75, L. 1981; amd. Secs. 2, 5, Ch. 475, L. 1983; amd. Sec. 1, Ch. 629, L. 1983; amd. Sec. 1, Ch. 738, L. 1985.

20-9-317. High school maximum budget schedule for 1985-86. (1) For each high school having an ANB of 24 or fewer pupils, the maximum shall be $113,708.

(2) For a secondary school having an ANB of more than 24 pupils, the maximum $4,738 shall be decreased at the rate of $25.84 for each additional pupil until the ANB shall have reached a total of 40 such pupils.

(3) For a school having an ANB of more than 40 pupils, the maximum of $4,324 shall be decreased at the rate of $25.84 for each additional pupil until the ANB shall have reached 100 pupils.

(4) For a school having an ANB of more than 100 pupils, a maximum of $2,774 shall be decreased at the rate of $4.32 for each additional pupil until the ANB shall have reached 200 pupils.

(5) For a school having an ANB of more than 200 pupils, the maximum of $2,342 shall be decreased by $2.38 for each additional pupil until the ANB shall have reached 300 pupils.

(6) For a school having an ANB of more than 300 pupils, the maximum of $2,104 shall be decreased at the rate of 44 cents until the ANB shall have reached 600 pupils.

(7) For a school having an ANB over 600 pupils, the maximum shall not exceed $1,973 per pupil.

(8) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town, shall be treated as one school for the purpose of this schedule.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(7) thru (9); amd. Sec. 2, Ch. 690, L. 1979; amd. Sec. 2, Ch. 75, L. 1981; amd. Sec. 2, Ch. 629, L. 1983; amd. Sec. 2, Ch. 738, L. 1985.

20-9-318. Elementary school maximum budget schedule for 1987-88 and succeeding years. For 1987-88 and succeeding school years, the elementary school maximum budget schedule is as follows:

(1) For each elementary school having an ANB of nine or fewer pupils, the maximum shall be $20,158 if said school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum shall be $20,158 plus $842.50 per pupil on the basis of the average number belonging over nine.

(3) For schools with an ANB of at least 14 pupils but less than 18 pupils that qualify for instructional aide funding under 20-9-322, the maximum shall be $33,042 plus $842.50 per pupil on the basis of the average number belonging over 14.

(4) For schools with an ANB of 18 pupils and employing one teacher, the maximum shall be $27,741 plus $842.50 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(5) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum shall be $44,290 plus $527.60 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(6) For schools having an ANB in excess of 40, the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

(a) For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of $1,957 shall be decreased at the rate of $1.90 for each additional pupil until the total number (ANB) shall have reached a total of 100 pupils.

(b) For a school having an ANB of more than 100 pupils, the maximum of $1,843 shall be decreased at the rate of $1.74 for each additional pupil until the ANB shall have reached 300 pupils.

(c) For a school having an ANB of more than 300 pupils, the maximum shall not exceed $1,496 for each pupil.

(7) The maximum per pupil for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All elementary schools operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(10) thru (15); amd. Sec. 3, Ch. 690, L. 1979; amd. Sec. 3, Ch. 75, L. 1981; amd. Secs. 3, 5, Ch. 475, L. 1983; amd. Sec. 3, Ch. 629, L. 1983; amd. Sec. 3, Ch. 738, L. 1985; amd. Sec. 1, Ch. 7, Sp. L. June 1986; amd. Sec. 3, Ch. 666, L. 1987.

Compiler's Comments

1987 Amendment: In introductory clause changed "1986-87" to "1987-88".

20-9-319. High school maximum budget schedule for 1987-88 and succeeding years. For 1987-88 and succeeding school years, the high school maximum budget schedule is as follows:

(1) For each high school having an ANB of 24 or fewer pupils, the maximum shall be $114,845.

(2) For a secondary school having an ANB of more than 24 pupils, the maximum $4,785 shall be decreased at the rate of $26.10 for each additional pupil until the ANB shall have reached a total of 40 such pupils.

(3) For a school having an ANB of more than 40 pupils, the maximum of $4,368 shall be decreased at the rate of $26.10 for each additional pupil until the ANB shall have reached 100 pupils.

(4) For a school having an ANB of more than 100 pupils, a maximum of $2,802 shall be decreased at the rate of $4.37 for each additional pupil until the ANB shall have reached 200 pupils.

(5) For a school having an ANB of more than 200 pupils, the maximum of $2,365 shall be decreased by $2.40 for each additional pupil until the ANB shall have reached 300 pupils.

(6) For a school having an ANB of more than 300 pupils, the maximum of $2,125 shall be decreased at the rate of 44 cents until the ANB shall have reached 600 pupils.

(7) For a school having an ANB over 600 pupils, the maximum shall not exceed $1,993 per pupil.

(8) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town, shall be treated as one school for the purpose of this schedule.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(16) thru (18); amd. Sec. 4, Ch. 690, L. 1979; amd. Sec. 4, Ch. 75, L. 1981; amd. Sec. 4, Ch. 629, L. 1983; amd. Sec. 4, Ch. 738, L. 1985; amd. Sec. 2, Ch. 7, Sp. L. June 1986; amd. Sec. 4, Ch. 666, L. 1987.

Compiler's Comments

1987 Amendment: In introductory clause changed "1986-87" to "1987-88".

20-9-320. Maximum general fund budget for junior high school. (1) The general fund budget amount for an approved and accredited junior high school shall be prorated between the elementary district general fund budget and the high school district general fund budget in the following manner:

(a) determine the per-ANB schedule amount for the school, as defined by 20-9-317 and 20-9-319, from the high school schedule;

(b) calculate the ANB for the regularly enrolled full-time pupils enrolled in the 7th and 8th grades of the junior high school;

(c) multiply the per-ANB schedule amount determined in subsection (1)(a) by the ANB calculated in subsection (1)(b) to determine the authorized general fund budget amount which shall be available for the elementary district general fund budget; and

(d) subtract the amount determined in subsection (1)(c) from the total authorized general fund budget amount for the school to determine the authorized general fund budget amount which shall be available for the high school district general fund budget.

(2) The general fund budget amount determined for each school of a district under the schedules provided in 20-9-316 through 20-9-319 shall be totaled to determine the maximum-general-fund-budget-without-a-voted-levy for such district.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(19).

Cross-References

Budgeting and cost sharing when junior high school operated by elementary district, 20-6-506.

20-9-321. Maximum general fund budget and contingency funds for special education. (1) For the purpose of establishing the maximum-budget-without-a-vote amount for a current year special education program for a school district, the superintendent of public instruction will determine the total estimated cost of the special education program for the school district on the basis of a special education program budget submitted by the district. The budget will be prepared on forms provided by the superintendent of public instruction and will set out for each program:

(a) the estimated allowable costs associated with operating the program where allowable costs are as defined in 20-7-431;

(b) the number of pupils expected to be enrolled in the program; and

(c) any other data required by the superintendent of public instruction for budget justification purposes and to administer the provisions of 20-9-315 through 20-9-321.

(2) The total amount of allowable costs approved by the superintendent of public instruction shall be the special education maximum-budget-without-a-vote amount for current year special education program purposes. The total amount of allowable costs that are approved for the special education budget shall not, under any condition, be less than the maximum-budget-without-a-vote amount for one regular ANB for each special full-time pupil in the school district.

(3) If a special education program is implemented or expanded during a given school term too late to be included in the determination of the district maximum-budget-without-a-vote for the school year as prescribed in this part, allowable costs approved under the budgeting provisions of subsections (1) and (2) for the operation of the program during the given year must be funded from any legislative appropriation for contingency financing for special education. Contingency funds granted under this subsection must be deposited in a separate account of the miscellaneous programs fund of the district as provided in 20-9-507. However, if contingency funds are not available, then subject to the approval of the program by the superintendent under the emergency budget provisions of 20-9-161(5), allowable costs for the given year may be added to the maximum-budget-without-a-vote amount for special education for the subsequent school year. Such costs must be recorded as previous year special education expenses in the school district budget for the subsequent school year.

(4) The sum of the previous year special education expenses as defined in subsection (3) above and the maximum-budget-without-a-vote for current year special education as defined in subsections (1) and (2) shall be the special education budget for accounting purposes.

(5) The maximum-budget-without-a-vote for special education will be added to the maximum-budget-without-a-vote of the regular program ANB defined in 20-9-311 and 20-9-313 to obtain the total maximum-budget-without-a-vote for the district.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec.

1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(20) thru (22); amd. Sec. 1, Ch. 315, L. 1983.

20-9-322. Elementary instructional aide funding qualification. (1) Any elementary school that anticipates an ANB of at least 14 but less than 18 pupils for the ensuing school fiscal year may determine the maximum general fund budget amount under the provisions of 20-9-316(3) or 20-9-318(3) if eligibility is approved in accordance with the following provisions:

(a) No later than May 10 of each year, the school district shall submit its application for approval for instructional aide funding to the superintendent of public instruction. The application shall include:

(i) the previous year's ANB;

(ii) an estimate of the current school fiscal year's ANB, as calculated under the provisions of 20-9-314(1), and the number of grade levels being taught on May 1 of the current year;

(iii) an estimate of the ANB and the number of grade levels anticipated for the ensuing school fiscal year;

(iv) the factual information on which such estimates are based; and

(v) any other information or data that may be required by the superintendent of public instruction.

(b) The superintendent of public instruction shall immediately review all the factors of the application and shall approve the application if the anticipated ANB is at least 14 but less than 18 pupils and a minimum of five grade levels are being taught as of May 1 of the current year or documentation is provided which indicates that the anticipated ANB will require a minimum of five grade levels to be taught in the ensuing school year.

(2) Whenever a school district applies for and is approved for instructional aide funding under the provisions of subsection (1), the district must hire an instructional aide.

(3) For the purposes of this section, the term "instructional aide" means:

(a) a person who is under the direct supervision of a teacher; or

(b) a certified teacher.

History: En. Sec. 1, Ch. 475, L. 1983.

Cross-References

Teacher certification, Title 20, ch. 4, part 1.

20-9-323 through 20-9-330 reserved.

20-9-331. Basic county tax and other revenues for county equalization of the elementary district foundation program. (1) It shall be the duty of the county commissioners of each county to levy an annual basic tax of 28 mills on the dollars of the taxable value of all taxable property within the county, except for vehicles subject to taxation under 61-3-504(2), for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of the elementary school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenues identified in subsection (2) below shall be subtracted from the sum of the county elementary transportation obligation and the total of the foundation programs of all elementary districts of the county.

(b) If the basic levy prescribed by this section produces more revenue than is required to finance the difference determined above, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed by this section and the revenues from the following sources shall be used for the equalization of the elementary district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of such proceeds and revenues by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of the property taxation established by the county levy required by this section;

(f) net proceeds taxes for interim production and new production, as defined in 15-23-601; and

(g) anticipated revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537.

History: En. 75-6912 by Sec. 262, Ch. 5, L. 1971; amd. Sec. 1, Ch. 355, L. 1973; R.C.M. 1947, 75-6912; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 413, L. 1983; amd. Sec. 1, Ch. 418, L. 1983; amd. Sec. 2, Ch. 699, L. 1983; amd. Sec. 1, Ch. 50, L. 1985; amd. Sec. 2, Ch. 265, L. 1985; amd. Sec. 1, Ch. 552, L. 1985; amd. Sec. 13, Ch. 695, L. 1985; amd. Sec. 15, Ch. 557, L. 1987; amd. Sec. 16, Ch. 611, L. 1987; amd. Sec. 20, Ch. 655, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 557 in middle of (2)(c), after "law", inserted "except money paid to a justice's court".

Chapter 611 in (1), near end of first sentence after "county", inserted exception clause; in (2)(e), after "money", deleted "including anticipated or reappropriated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536"; and inserted (2)(g).

Chapter 655 in (2)(f), before "new production", inserted "interim production and".

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

20-9-332. Fines and penalties proceeds for elementary county equalization. All fines and penalties collected under the provisions of this title, except those collected by a justice's court, shall be paid into the county elementary equalization fund as provided by 20-9-331(2)(c). In order to implement this section and any other provision of law requiring the deposit of fines in the elementary county equalization fund, a report shall be made to the county superintendent of the county, at the close of each term, by the clerk of each district court, reporting all fines imposed and collected during the term and indicating the type of violation and the date of collection.

History: En. 75-8302 by Sec. 486, Ch. 5, L. 1971; R.C.M. 1947, 75-8302; amd. Sec. 3, Ch. 413, L. 1983; amd. Sec. 16, Ch. 557, L. 1987.

Compiler's Comments

1987 Amendment: Near beginning of first sentence, after "title", substituted "except those collected by a justice's court" for "shall be collected by the action of a court of competent jurisdiction and" and near middle of second sentence, after "superintendent of the county", deleted "in which each court or justice of the peace shall have jurisdiction"; deleted former (1) that read: "(1) during the month of September, each justice of the peace shall report all fines imposed and collected during the preceding year, indicating the type of violation and the date of collection"; and made minor changes in phraseology and punctuation.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Penalty for violation of school laws, 20-1-207.

20-9-333. Basic special levy and other revenues for county equalization of high school district foundation program. (1) It shall be the duty of the county commissioners of each county to levy an annual basic special tax for high schools of 17 mills on the dollar of the taxable value of all taxable property within the county, except for vehicles subject to taxation under 61-3-504(2), for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of high school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the estimated revenues identified in subsections (2)(a) and (2)(b) below shall be subtracted from the sum of the county's high school tuition obligation and the total of the foundation programs of all high school districts of the county.

(b) If the basic levy prescribed by this section produces more revenue than is required to finance the difference determined above, the county treasurer shall remit the surplus to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed in this section and the revenues from the following sources shall be used for the equalization of the high school district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of these proceeds by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state moneys distributed to the county as a payment in lieu of the property taxation established by the county levy required by this section;

(c) net proceeds taxes for interim production and new production, as defined in 15-23-601; and

(d) anticipated revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537.

History: En. 75-6913 by Sec. 263, Ch. 5, L. 1971; amd. Sec. 2, Ch. 355, L. 1973; R.C.M. 1947, 75-6913; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 418, L. 1983; amd. Sec. 3, Ch. 699, L. 1983; amd. Sec. 2, Ch. 50, L. 1985; amd. Sec. 3, Ch. 265, L. 1985; amd. Sec. 3, Ch. 299, L. 1985; amd. Sec. 2, Ch. 552, L. 1985; amd. Sec. 14, Ch. 695, L. 1985; amd. Sec. 17, Ch. 611, L. 1987; amd. Sec. 21, Ch. 655, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 611 in (1), near end of first sentence after "county", inserted exception clause; in (2)(b), after "moneys", deleted "including anticipated or reappropriated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536"; and inserted (2)(d).

Chapter 655 in (2)(c), before "new production", inserted "interim production and".

20-9-334. Apportionment of county equalization moneys by county superintendent. The county superintendent shall separately apportion the revenues deposited in the basic county tax account and the revenues deposited in the basic special tax for high schools account to the several districts of the county on a monthly basis. The apportionments shall be known as "county equalization moneys". Before the county superintendent makes the monthly apportionments, he shall:

(1) deduct from the revenues available in the basic county tax account the amount required for the month to pay the county's obligation for elementary transportation reimbursements; and

(2) deduct from the revenues available in the basic special tax for high schools account the amount required for the month to pay the county's obligation for high school out-of-county tuition.

History: En. 75-6914 by Sec. 264, Ch. 5, L. 1971; amd. Sec. 19, Ch. 266, L. 1977; R.C.M. 1947, 75-6914; amd. Sec. 3, Ch. 552, L. 1985.

Cross-References

Duty of County Treasurer to notify Superintendent of money subject to apportionment, 7-6-2801.

County transportation reimbursement, 20-10-146.

20-9-335. Formula for apportionment of county equalization moneys. (1) After making such deductions prescribed in 20-9-334, the county superintendent shall apportion the remaining amount of moneys available in the basic county tax account to the several public elementary districts of the county and in the basic special tax for high schools account to the several public secondary districts of the county in proportion to their needs under the foundation program in accordance with the following procedure:

(a) determine the percentage that the county equalization moneys available for the support of the foundation programs of the public elementary districts in the county is of the total amount of the foundation programs of all public elementary districts;

(b) multiply the foundation program amount of each public elementary district by the percentage determined in subsection (1)(a) above to determine the portion of the county equalization moneys available to each public elementary district.

(2) The above procedure shall also be applied for public secondary districts.

(3) No territory situated within a county shall be excluded from the apportionment of the county equalization moneys under this section solely

because such territory lies within the boundaries of a joint district. Cash balances to the credit of any district at the end of a school fiscal year shall not be considered in the apportionment procedure prescribed in this section.

(4) The county equalization moneys apportioned under these procedures shall constitute the first source of revenue in calculating the financing of the public elementary and secondary district foundation program. The county superintendent shall use the apportionment procedure prescribed in this section in computing the estimated revenues for the financing of the ensuing year's foundation program for budgeting purposes.

History: En. 75-6915 by Sec. 265, Ch. 5, L. 1971; amd. Sec. 11, Ch. 137, L. 1973; amd. Sec. 1, Ch. 255, L. 1973; R.C.M. 1947, 75-6915; amd. Sec. 4, Ch. 413, L. 1983; amd. Sec. 4, Ch. 299, L. 1985.

20-9-336 through 20-9-340 reserved.

20-9-341. Definition of interest and income moneys. (1) As used in this title, the term "interest and income moneys" means the total of the following revenues, as provided for by Article X, section 5, of the 1972 Montana constitution:

(a) 95% of the interest received from the investment of the public school fund;

(b) 95% of the interest received from the investment of any other school funds held in trust by the state board of land commissioners;

(c) 95% of the income received from the leasing of state school lands after any deductions that may be made under the provisions of Title 77, chapter 1, part 6; and

(d) 95% of any other income derived from any other covenant affecting the use of state school lands.

(2) The remaining 5% of such revenues shall be annually credited to the public school fund.

History: En. 75-6907 by Sec. 257, Ch. 5, L. 1971; amd. Sec. 9, Ch. 137, L. 1973; R.C.M. 1947, 75-6907.

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.

Board of Land Commissioners, Art. X, sec. 4, Mont. Const.

20-9-342. Deposit of interest and income moneys by state board of land commissioners. The state board of land commissioners shall annually deposit the interest and income moneys for each calendar year into the state special revenue fund for state equalization aid, provided for by 20-9-343, by the last business day of February following the calendar year in which the moneys were received.

History: En. 75-6908 by Sec. 258, Ch. 5, L. 1971; amd. Sec. 10, Ch. 137, L. 1973; R.C.M. 1947, 75-6908; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Disposition of revenues and profits from state lands, 77-1-216.

20-9-343. Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means those moneys deposited in the state special revenue fund as required in this section plus any legislative appropriation of money from other sources for distribution to the public schools for the purpose of equalization of the foundation program.

(2) The legislative appropriation for state equalization aid shall be made in a single sum for the biennium. The superintendent of public instruction has authority to spend such appropriation, together with the earmarked revenues provided in subsection (3), as required for foundation program purposes throughout the biennium.

(3) The following shall be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) 31.8% of all money received from the collection of income taxes under chapter 30 of Title 15;

(b) 25% of all money, except as provided in 15-31-702, received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) 100% of the money allocated to state equalization from the collection of the severance tax on coal;

(d) 100% of the money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income money described in 20-9-341 and 20-9-342;

(f) income from the education trust fund account; and

(g) in addition to these revenues, the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333.

(4) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce the appropriation required for the next succeeding biennium.

History: En. 75-6916 by Sec. 266, Ch. 5, L. 1971; amd. Sec. 12, Ch. 137, L. 1973; amd. Sec. 3, Ch. 355, L. 1973; amd. Sec. 12, Ch. 502, L. 1975; amd. Sec. 1, Ch. 356, L. 1977; R.C.M. 1947, 75-6916; amd. Sec. 15, Ch. 634, L. 1979; amd. Sec. 2, Ch. 317, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 20, Sp. L. June 1986; amd. Sec. 70, Ch. 370, L. 1987; amd. Sec. 3, Ch. 662, L. 1987; amd. Sec. 5, Ch. 666, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 370 at beginning of (3)(c) substituted "the amount provided in 15-35-108" for "10%" (not codified, redundant with Ch. 662 amendment); at end of (3)(g) deleted "shall be paid into the same state special revenue fund"; and at end of (4) deleted "[or may be transferred to the state permissive account if revenues in that fund are insufficient to meet the state's permissive amount obligation]".

Chapter 662 in (1), (3)(a), (3)(b), (3)(d), and (3)(e) changed "moneys" to "money"; in (3)(c) changed "10%" to "100%", after "of the" substituted "money allocated to state equalization" for "moneys received", and after "coal" deleted "under chapter 35 of Title 15"; and in (3)(f) substituted "education trust" for "local impact and education trust".

Chapter 666 in (3)(a) changed "25%" to "31.8%"; and near end of (3)(b), after "corporation license", inserted "and income".

Void Amendment: The amendment in sec. 1, Ch. 2, L. 1987, was voided by sec. 12, Ch. 662, L. 1987.

Cross-References

Disposal of severance taxes, 15-35-108.

Local impact and education trust fund account created, 90-6-202.

20-9-344. Purpose of state equalization aid and duties of the board of public education for distribution — conditions of first payment. (1) The money available for state equalization aid shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any and all costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings, new grounds, and transportation.

(2) The board of public education shall administer and distribute the state equalization aid in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(a) adopt policies for regulating the distribution of state equalization aid in accordance with the provisions of law and in a manner that would most effectively meet the financial needs of districts;

(b) have the power to require such reports from the county superintendents, budget boards, county treasurers, and trustees as it may deem necessary; and

(c) order the superintendent of public instruction to distribute the state equalization aid on the basis of each district's annual entitlement to such aid as established by the superintendent of public instruction. In ordering the distribution of state equalization aid, the board of public education shall not increase or decrease the state equalization aid distribution to any district on account of any difference which may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(3) Should a district receive more state equalization aid than it is entitled to, the county treasurer must return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the department of commerce.

(4) The first payment of state equalization aid must be:

(a) based on an estimate of 20% of each district's entitlement; and

(b) distributed by July 15 of the school fiscal year.

History: En. 75-6917 by Sec. 267, Ch. 5, L. 1971; amd. Sec. 1, Ch. 166, L. 1973; amd. Sec. 2, Ch. 345, L. 1973; amd. Sec. 1, Ch. 346, L. 1973; amd. Sec. 1, Ch. 55, L. 1974; amd. Sec. 41, Ch. 213, L. 1975; R.C.M. 1947, 75-6917; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 6, Ch. 317, L. 1981; amd. Secs. 1, 3, Ch. 236, L. 1983; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 18, Sp. L. June 1986.

20-9-345. Repealed. Sec. 7, Ch. 317, L. 1981.

History: En. 75-6917.1 by Sec. 2, Ch. 55, L. 1974; R.C.M. 1947, 75-6917.1; amd. Sec. 1, Ch. 540, L. 1981.

20-9-346. Duties of the superintendent of public instruction for state equalization aid distribution. The superintendent of public instruction shall administer the distribution of the state equalization aid by:

(1) establishing each district's annual entitlement to state equalization aid, based on the data reported in the budget for each district that has been duly adopted for the current school fiscal year and verified by the superintendent of public instruction and by applying such verified data under the provisions of the state equalization aid allocation procedure prescribed in 20-9-347;

(2) recommending to the board of public education the annual entitlement of all districts to state equalization aid to enable the board of public education to order the distribution of state equalization aid;

(3) distributing by state warrant the state equalization aid, for each district entitled to such aid, to the county treasurer of the county where the district is located, in accordance with the distribution ordered by the board of public education;

(4) keeping a record in his office of the full and complete data concerning moneys available for state equalization aid and the entitlements for state equalization aid of the several districts of the state;

(5) reporting to the board of public education the estimated amount which will be available for state equalization aid; and

(6) reporting to both branches of the state legislature in any year when a session is convened:

(a) the figures and data available in his office concerning distributions of state equalization aid during the preceding 2 school fiscal years;

(b) the amount of state equalization aid then available;

(c) the apportionment made of such available moneys but not yet distributed; and

(d) the latest estimate of accruals of moneys available for state equalization aid.

History: En. 75-6918 by Sec. 268, Ch. 5, L. 1971; amd. Sec. 2, Ch. 166, L. 1973; R.C.M. 1947, 75-6918.

20-9-347. Formula for state equalization aid apportionment. (1) The superintendent of public instruction shall apportion the state equalization aid, individually for the elementary districts of a county or the high school districts of a county, in accordance with 20-9-346 and on the basis of the following procedure:

(a) Determine the percentage that the total funds available to all counties in the state in support of the foundation program (including the state moneys available for state equalization aid) is of the total amount of the foundation programs of all counties.

(b) Determine the percentage that the total funds available in each county in support of the foundation programs in such county (excluding state moneys available for state equalization aid) is of the total amount of the foundation programs of all districts of such county.

(c) Counties in which the percentage determined in subsection (1)(b) exceeds the percentage determined in subsection (1)(a) shall not be entitled to an apportionment of the state equalization aid.

(d) After elimination of the counties referred to in subsection (1)(c), determine the percentage that the total moneys available to all remaining counties in support of the foundation program (including the state moneys available for state equalization aid) is of the total amount of the foundation programs of all such remaining counties.

(e) Each district of each remaining county shall be entitled to an apportionment of the state equalization aid which shall be the difference between the percentage determined in subsection (1)(d) and the percentage determined for such county in subsection (1)(b) multiplied by the foundation program amount for such district.

(2) The superintendent of public instruction shall supply the county treasurer and the county superintendent with a report of the apportionments of state equalization aid to the several districts of the county, and the state equalization aid shall be apportioned to such districts in accordance with such report.

History: En. 75-6919 by Sec. 269, Ch. 5, L. 1971; R.C.M. 1947, 75-6919.

20-9-348. Estimation of state equalization aid for budget purposes. The apportionment of state equalization aid shall be the second source of revenue in calculating the financing of the elementary district foundation program and the high school district foundation program. In order to allow for the estimation of the amount of money to be realized from this source of revenue when the county superintendent is estimating the general fund budget revenues, the county superintendent shall consider that the state foundation program revenues and county equalization moneys, together, will be capable of financing 100% of the foundation program.

History: **En. 75-6920 by Sec. 270, Ch. 5, L. 1971; R.C.M. 1947, 75-6920; amd. Sec. 5, Ch. 299, L. 1985.**

20-9-349 and 20-9-350 reserved.

20-9-351. Funding of deficiency in state equalization aid. If the foundation program level made under the provisions of 20-9-348 is less than 100%, it shall be the duty of the superintendent of public instruction to request the budget director to submit a request for a supplemental appropriation in the second year of the biennium that would be sufficient to complete the funding of the foundation programs of the elementary or secondary schools, or both, for the current biennium.

History: **En. 75-6921 by Sec. 271, Ch. 5, L. 1971; amd. Sec. 4, Ch. 355, L. 1973; R.C.M. 1947, 75-6921; amd. Sec. 3, Ch. 317, L. 1981; amd. Sec. 2, Ch. 540, L. 1981; amd. Sec. 4, Ch. 15, L. 1985; amd. Sec. 6, Ch. 299, L. 1985.**

Cross-References

Supplemental appropriations, 17-7-301.

20-9-352. Permissive amount and permissive levy. (1) Whenever the trustees of any district shall deem it necessary to adopt a general fund budget in excess of the foundation program amount but not in excess of the maximum general fund budget amount for such district as established by the schedules in 20-9-316 through 20-9-321, the trustees shall adopt a resolution stating the reasons and purposes for exceeding the foundation program amount. Such excess above the foundation program amount shall be known as the "permissive amount", and it shall be financed by a levy, as prescribed in 20-9-141, on the taxable value of all taxable property within the district, except for vehicles subject to taxation under 61-3-504(2), supplemented with any biennial appropriation by the legislature for this purpose. The proceeds of such an appropriation shall be deposited to the state special revenue fund, permissive account.

(2) The district levies to be set for the purpose of funding the permissive amount are determined as follows:

(a) For each elementary school district, the county commissioners shall annually set a levy not exceeding 6 mills on all the taxable property in the district, except for vehicles subject to taxation under 61-3-504(2), for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive amount to the maximum permissive amount by 6 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy, plus anticipated revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537, is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the state special revenue fund according to the provisions of subsections (3) and (4) of this section.

(b) For each high school district, the county commissioners shall annually set a levy not exceeding 4 mills on all taxable property in the district, except for vehicles subject to taxation under 61-3-504(2), for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive levy to the maximum permissive amount by 4 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy, plus anticipated revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537, and plus net proceeds taxes for interim production and new production, as defined in 15-23-601, is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the state special revenue fund according to the provisions of subsections (3) and (4) of this section.

(3) The superintendent of public instruction shall, if the appropriation by the legislature for the permissive account for the biennium is insufficient, request the budget director to submit a request for a supplemental appropriation in the second year of the biennium. The supplemental appropriation shall provide enough revenue to fund the permissive deficiency of the elementary and high school districts of the state. The proceeds of this appropriation shall be deposited to the state special revenue fund, permissive account, and shall be distributed to the elementary and high school districts in accordance with their entitlements as determined by the superintendent of public instruction according to the provisions of subsections (1) and (2) of this section.

(4) Distribution under this section from the state special revenue fund shall be made in two payments. The first payment shall be made at the same time as the first distribution of state equalization aid is made after January 1 of the fiscal year. The second payment shall be made at the same time as the last payment of state equalization aid is made for the fiscal year. If the appropriation is not sufficient to finance the deficiencies of the districts as determined according to subsection (2), each district will receive the same percentage of its deficiency. Surplus revenue in the second year of the biennium may be used to reduce the appropriation required for the next succeeding biennium or may be transferred to the state equalization aid state special revenue fund if revenues in that fund are insufficient to meet foundation program requirements.

History: En. 75-6922 by Sec. 272, Ch. 5, L. 1971; amd. Sec. 5, Ch. 355, L. 1973; amd. Sec. 1, Ch. 212, L. 1975; R.C.M 1947, 75-6922; amd. Sec. 4, Ch. 317, L. 1981; amd. Sec. 3, Ch. 540, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 418, L. 1983; amd. Sec. 4, Ch. 699, L. 1983; amd. Sec. 5, Ch. 15, L. 1985; amd. Sec. 4, Ch. 265, L. 1985; amd. Sec. 15, Ch. 695, L. 1985; amd. Sec. 18, Ch. 611, L. 1987; amd. Sec. 22, Ch. 655, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 611 in (1), near middle of second sentence after "levy", inserted "as prescribed in 20-9-141" and after "district" deleted "as prescribed in 20-9-141"; in (1), (2)(a), and (2)(b), after "district", inserted "except for vehicles subject to taxation under 61-3-504(2)"; in third sentence of (2)(a), after "anticipated", substituted "revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537" for "or reappropriated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536"; and in (2)(b), after "anticipated", substituted "revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537" for "motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536".

Chapter 655 in (2)(b), near middle of third sentence before "new production", inserted "interim production and".

Cross-References

Supplemental appropriations, 17-7-301.

20-9-353. Additional levy for general fund — election for authorization to impose. (1) The trustees of any district may propose to adopt a general fund budget in excess of the general fund budget amount for such district as established by the schedules in 20-9-316 through 20-9-321 for any of the following purposes:

(a) building, altering, repairing, or enlarging any schoolhouse of the district;

(b) furnishing additional school facilities for the district;

(c) acquisition of land for the district;

(d) proper maintenance and operation of the school programs of the district.

(2) When the trustees of any district determine that an additional amount of financing is required for the general fund budget that is in excess of the statutory schedule amount, the trustees shall submit the proposition of an additional levy to raise such excess amount of general fund financing to the electors who are qualified under 20-20-301 to vote upon such proposition except that no election shall be required to permit the school trustees to use any funds available to finance the additional amount other than those funds to be raised by the additional levy. Such special election shall be called and conducted in the manner prescribed by this title for school elections. The ballot for such election shall state only the amount of money to be raised by additional property taxation, the approximate number of mills required to raise such money, and the purpose for which such money will be expended, and it shall be in the following format:

PROPOSITION

Shall a levy be made in addition to the levies authorized by law in such number of mills as may be necessary to raise the sum of (state the amount to be raised by additional tax levy), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional tax levy is made)?

☐ FOR the levy.

☐ AGAINST the levy.

(3) If the election on any additional levy for the general fund is approved by a majority vote of those electors voting at such election, the proposition shall carry and the trustees may use any portion or all of the authorized amount in adopting the preliminary general fund budget. The trustees shall certify the additional levy amount authorized by such a special election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy such number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141, as are required to raise the amount of such additional levy.

(4) Authorization to levy an additional tax under the provisions of this section shall be effective for only 1 school fiscal year and shall be authorized

by a special election conducted before August 1 of the school fiscal year for which it is effective.

History: En. 75-6923 by Sec. 273, Ch. 5, L. 1971; amd. Sec. 7, Ch. 83, L. 1971; amd. Sec. 6, Ch. 355, L. 1973; amd. Sec. 2, Ch. 214, L. 1974; amd. Sec. 1, Ch. 230, L. 1974; amd. Sec. 1, Ch. 346, L. 1974; amd. Sec. 1, Ch. 454, L. 1975; R.C.M. 1947, 75-6923; amd. Sec. 2, Ch. 72, L. 1979; amd. Sec. 5, Ch. 75, L. 1981; amd. Sec. 2, Ch. 110, L. 1985; amd. Sec. 1, Ch. 338, L. 1987.

Compiler's Comments

1987 Amendment: At end of (2), in two places in ballot form language, deleted "additional" before "levy".

Cross-References

Property tax levies, Title 15, ch. 10.

School property, Title 20, ch. 6, part 6.

School elections, Title 20, ch. 20.

Part 4

School Bonds

Part Cross-References

Investment of county money, Title 7, ch. 6, part 27.

Bond issues, Title 17, ch. 5.

Pledge of school bonds to secure deposits of public funds, 17-6-103.

School bonds as permissible investment of public funds, 17-6-211.

20-9-401. Applicable laws for school district bonding. (1) The school district bonding provisions of this title and all applicable laws of the state shall govern:

(a) the issuance, refunding, and sale of school district bonds;

(b) the levying of taxes for payment of the principal and interest on school district bonds; and

(c) the redemption of bonds.

(2) Should there be a conflict between the provisions of this title and the provisions of any other law of the state, the provisions of this title shall govern.

History: En. 75-7101 by Sec. 302, Ch. 5, L. 1971; R.C.M. 1947, 75-7101.

Cross-References

Property tax levies, Title 15, ch. 10.

Refunding bonds, Title 17, ch. 5, part 3.

20-9-402. Definition of school district for bonding purposes. For the purposes of indebting an elementary district, a high school district, or a community college district by the issuance of bonds under the provisions of this title, the term "school district" shall mean any elementary district, high school district, or community college district, except the following types of high schools recognized as high school districts without a bonding authority in 20-6-101:

(1) high schools operated by an elementary district in a county that has not been divided into high school districts; or

(2) county high schools located in a county that has not been divided into high school districts by the county high school boundary commission.

History: En. 75-7102 by Sec. 303, Ch. 5, L. 1971; amd. Sec. 1, Ch. 419, L. 1973; R.C.M. 1947, 75-7102.

20-9-403. Bond issues for certain purposes. (1) The trustees of a school district may issue and negotiate bonds on the credit of the school district for the purpose of:

(a) building, altering, repairing, buying, furnishing, equipping, purchasing lands for, and/or obtaining a water supply for a school, teacherage, dormitory, gymnasium, other building, or combination of said buildings for school purposes;

(b) buying a school bus or buses;

(c) providing the necessary money to redeem matured bonds, maturing bonds, or coupons appurtenant to bonds when there is not sufficient money to redeem them;

(d) providing the necessary money to redeem optional or redeemable bonds when it is for the best interest of the school district to issue refunding bonds; or

(e) funding a judgment against the district.

(2) Any money realized from the sale of any bonds issued on the credit of a high school district shall not be used for any of the above purposes in an elementary school district, and such money may be used for any of the above purposes for a junior high school but only to the extent that the 9th grade of the high school is served thereby.

History: En. 75-7103 by Sec. 304, Ch. 5, L. 1971; amd. Sec. 1, Ch. 76, L. 1973; amd. Sec. 1, Ch. 189, L. 1973; R.C.M. 1947, 75-7103; amd. Sec. 23, Ch. 658, L. 1987.

Compiler's Comments

1987 Amendment: In (1)(a), at end, deleted "including postsecondary vocational-technical centers in the school district".

Cross-References

Vote unnecessary if bond issue authorized, 20-6-603.

20-9-404. Contracts and bonds for joint construction. The trustees of a school district may enter into a contract with the trustees of any school district within the county or with any school district in an adjoining county to provide for the joint construction of vocational-technical secondary schools upon such terms and conditions as may be mutually agreed upon between such districts. The trustees of any district executing a contract in accordance with this section may levy taxes and issue bonds for the purpose of constructing the facilities authorized by this section.

History: En. 75-7103.1 by Sec. 1, Ch. 371, L. 1975; R.C.M. 1947, 75-7103.1.

Cross-References

Sources of financing for vocational-technical center budgets, 20-16-202.

Vocational-technical center funding, 20-16-204.

20-9-405. Proportional joint ownership — disposition of moneys. The vocational-technical secondary school constructed under 20-9-404 shall be jointly owned by the school districts contributing to its construction in proportion to the contribution of each district. The sale or other disposition of a district's interest in the school shall be made in accordance with 20-6-604. Moneys received from the sale or disposition of a district's interest in a vocational-technical secondary school shall be credited to the debt service fund, building fund, general fund, or any combination of these three funds, at the discretion of the trustees.

History: En. 75-7103.2 by Sec. 2, Ch. 371, L. 1975; R.C.M. 1947, 75-7103.2.

20-9-406. Limitations on amount of bond issue. (1) The maximum amount for which each school district may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the taxable value of the property subject to taxation as ascertained by the last completed assessment for state, county, and school taxes previous to the incurring of such indebtedness. The 45% maximum, however, may not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district. All bonds issued in excess of such amount shall be null and void, except as provided in this section.

(2) When the total indebtedness of a school district has reached the 45% limitation prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(3) Whenever bonds are issued for the purpose of refunding bonds, any moneys to the credit of the debt service fund for the payment of the bonds to be refunded are applied towards the payment of such bonds and the refunding bond issue is decreased accordingly.

History: En. 75-7104 by Sec. 305, Ch. 5, L. 1971; amd. Sec. 3, Ch. 33, L. 1973; amd. Sec. 32, Ch. 100, L. 1973; amd. Sec. 1, Ch. 353, L. 1974; amd. Sec. 1, Ch. 56, L. 1975; amd. Sec. 1, Ch. 432, L. 1975; amd. Sec. 46, Ch. 566, L. 1977; R.C.M. 1947, 75-7104(1), (2); amd. Sec. 61, Ch. 614, L. 1981.

Cross-References

Refunding bonds, Title 17, ch. 5, part 3.

20-9-407. Industrial facility agreement for bond issue in excess of maximum. (1) In a school district within which a new major industrial facility which seeks to qualify for taxation as class five property under 15-6-135 is being constructed or is about to be constructed, the school district may require, as a precondition of the new major industrial facility qualifying as class five property, that the owners of the proposed industrial facility enter into an agreement with the school district concerning the issuing of bonds in excess of the 45% limitation prescribed in 20-9-406. Under such an agreement, the school district may, with the approval of the voters, issue bonds which exceed the limitation prescribed in this section by a maximum of 45% of the estimated taxable value of the property of the new major industrial facility subject to taxation when completed. The estimated taxable value of the property of the new major industrial facility subject to taxation shall be computed by the department of revenue when requested to do so by a resolution of the board of trustees of the school district. A copy of the department's statement of estimated taxable value shall be printed on each ballot used to vote on a bond issue proposed under this section.

(2) Pursuant to the agreement between the new major industrial facility and the school district and as a precondition to qualifying as class five property, the new major industrial facility and its owners shall pay, in addition to the taxes imposed by the school district on property owners generally, so much of the principal and interest on the bonds provided for under this section as represents payment on an indebtedness in excess of the limitation prescribed in 20-9-406. After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in this section, the new major industrial facility shall be

entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of no more than 20 years. The credit shall as a total amount be equal to the amount which the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.

(3) A major industrial facility is a facility subject to the taxing power of the school district, whose construction or operation will increase the population of the district, imposing a significant burden upon the resources of the district and requiring construction of new school facilities. A significant burden is an increase in ANB of at least 20% in a single year.

History: En. 75-7104 by Sec. 305, Ch. 5, L. 1971; amd. Sec. 3, Ch. 33, L. 1973; amd. Sec. 32, Ch. 100, L. 1973; amd. Sec. 1, Ch. 353, L. 1974; amd. Sec. 1, Ch. 56, L. 1975; amd. Sec. 1, Ch. 432, L. 1975; amd. Sec. 46, Ch. 566, L. 1977; R.C.M. 1947, 75-7104(3) thru (5); amd. Sec. 26, Ch. 693, L. 1979; amd. Sec. 3, Ch. 15, L. 1985.

Cross-References
ANB defined, 20-1-101.
Educational impact statements, 20-1-208.
Calculation of average number belonging, 20-9-311.

20-9-408. Definition of forms of bonds. As used in this title, unless the context clearly indicates otherwise:

(1) "amortization bonds" means the form of bonds on which a part of the principal must be paid each time interest becomes payable. The part payment of principal increases at each installment in the same amount that the interest decreases. The combined interest and principal due on each due date remains the same until the bonds are paid. The final payment may vary from prior payments in the amount resulting from disregarding fractional cents in prior payments.

(2) "serial bonds" means the form of bonds which are payable in annual installments and on which the amount maturing each year may not be more than three times the principal amount of the bonds maturing in the immediately preceding year.

History: En. 75-7105 by Sec. 306, Ch. 5, L. 1971; R.C.M. 1947, 75-7105; amd. Sec. 7, Ch. 631, L. 1983.

20-9-409. Form of bond to be issued. All bonds issued by a school district shall be amortization bonds unless serial bonds, in the judgment of the trustees, will be more advantageous to the school district and can be sold at a comparatively reasonable rate of interest.

History: En. 75-7106 by Sec. 307, Ch. 5, L. 1971; R.C.M. 1947, 75-7106.

20-9-410. Limitation of term and interest — timing for redemption. School district bonds shall not be issued for a term longer than 20 years, except that bonds issued to refund or redeem outstanding bonds shall not be issued for a term longer than 10 years unless the unexpired term of the bonds to be refunded or redeemed is in excess of 10 years, in which case the refunding or redeeming bonds may be issued for such unexpired term. All bonds issued for a longer term than 5 years shall be redeemable at the option of the school district on any interest payment date after one-half of the term for which they were issued has expired, and it shall be so stated on the face of the bonds. The interest shall be as provided under 17-5-102 and shall be payable semiannually.

History: En. 75-7107 by Sec. 308, Ch. 5, L. 1971; amd. Sec. 7, Ch. 234, L. 1971; amd. Sec. 3, Ch. 284, L. 1973; R.C.M. 1947, 75-7107; amd. Sec. 11, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 71, Ch. 370, L. 1987.

Compiler's Comments

1987 Amendment: In last sentence, after "interest shall", substituted "be as provided under 17-5-102" for "not exceed the limitation of 17-5-102".

20-9-411. Dates of issue and payments. In order that the dates of payment of installments on school district bond issues may coincide as nearly as possible with the largest monthly tax collections, all school district bonds shall preferably bear a date of some day in June or December. For this reason, the bonds may be dated back not more than 5 months from the time of the actual sale, but no interest shall be charged on these bonds before they have been delivered to the purchaser and payment has been made by the purchaser. Interest accrued on such bonds according to their terms at the time of delivery shall either be refunded by the purchaser or deducted from the first interest payments. The failure to date such bonds in June or December shall not affect their validity.

History: En. 75-7108 by Sec. 309, Ch. 5, L. 1971; R.C.M. 1947, 75-7108.

20-9-412. Issuance of refunding bonds without an election. (1) Bonds of a school district issued for the purpose of providing the money needed to redeem outstanding bonds may be issued without submitting the proposition to the electorate at an election. In order to issue bonds for such purpose, the trustees, at a regular meeting or a duly called special meeting, shall adopt a resolution setting forth:

(a) the facts regarding the outstanding bonds that are to be redeemed;

(b) the reasons for issuing new bonds; and

(c) the term and details of the new bond issue.

(2) After the adoption of such resolution, the trustees shall:

(a) sell the bonds at a private negotiated sale; or

(b) at their option, give notice of the sale of such new bonds in the same manner that notice is required to be given for the sale of bonds authorized at a school election and sell such new bonds in open competitive bidding, by written bids or by sealed bids.

(3) Bonds shall not be refunded by the issuance of new bonds unless the rate of interest offered on the new bonds is at least ½ of 1% per annum less than the rate of interest in the bonds to be refunded or redeemed.

(4) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which such bonds mature or are subject to redemption, provided the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale thereof, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or out of the state. Funds so deposited shall be invested in securities which are general obligations of the United States or the principal and interest of which are guaranteed by the United States and which mature or are callable at the option of the holder on such dates and bear interest at such rates and payable on such dates as shall be required to provide funds sufficient, with any cash

retained in the escrow account, to pay when due the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption, and to pay the principal thereof at maturity or upon such redemption date, and to pay any redemption premium. The escrow account shall be irrevocably appropriated to the payment of the principal of and interest and redemption premium, if any, on the refunded bonds. Funds to the credit of the debt service fund for the payment of the refunded bonds and not required for the payment of principal of or interest thereon due prior to issuance of the refunding bonds may be appropriated by the district to the escrow account. The school district may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds refunded pursuant to this part are not to be considered outstanding for purposes of 20-9-406 or any other debt limitation.

History: En. 75-7109 by Sec. 310, Ch. 5, L. 1971; R.C.M. 1947, 75-7109; amd. Sec. 6, Ch. 647, L. 1983.

Cross-References

Counties — advance refunding bonds, 7-7-2316.

Cities — advance refunding bonds, 7-7-4316.

Refunding bonds, Title 17, ch. 5, part 3.

20-9-413 through 20-9-420 reserved.

20-9-421. Election to authorize the issuance of school district bonds and the methods of introduction. A school district shall not issue bonds for any purpose other than that provided in 20-9-412 unless the issuance of bonds has been authorized by the qualified electors of the school district at an election called for the purpose of considering a proposition to issue such bonds. A school district bond election shall be called by a resolution as prescribed under the provisions of 20-20-201 when:

(1) the trustees, of their own volition, adopt a resolution to that effect; or

(2) the trustees have received a petition which asks that an election be held to consider a bond proposition and which has been validated under the provisions of 20-9-425.

History: En. 75-7110 by Sec. 311, Ch. 5, L. 1971; R.C.M. 1947, 75-7110.

Cross-References

Mail ballot elections prohibited, 13-19-104.

School elections, Title 20, ch. 20.

20-9-422. Additional requirements for trustees' resolution calling bond election. In addition to the requirements for calling an election that are prescribed in 20-20-201 and 20-20-203, the trustees' resolution calling a school district bond election shall:

(1) fix the exact amount of the bonds proposed to be issued, which may be more or less than the amounts estimated in a petition;

(2) fix the maximum number of years in which the proposed bonds would be paid; and

(3) in the case of initiation by a petition, state the essential facts about the petition and its presentation.

History: En. 75-7111 by Sec. 312, Ch. 5, L. 1971; R.C.M. 1947, 75-7111.

20-9-423. Form, contents, and circularization of petition proposing school district bond election. Any petition for the calling of an election on the proposition of issuing school district bonds shall:

(1) plainly state each purpose of the proposed bond issue and the estimated amount of the bonds that would be issued for each purpose;

(2) be signed by not less than 20% of the school district electors qualified to vote under the provisions of 20-20-301 in order to constitute a valid petition;

(3) be a single petition or it may be composed of more than one petition, all being identical in form, and after being circulated and signed, they shall be fastened together to form a single petition when submitted to the county registrar;

(4) be circulated by any one or more qualified electors of the school district; and

(5) contain an affidavit of each registered elector circulating a petition attached to the portion of the petition he circulated. Such affidavit shall attest to the authenticity of the signatures and that the signers knew the contents of the petition at the time of signing it.

History: En. 75-7112 by Sec. 313, Ch. 5, L. 1971; amd. Sec. 8, Ch. 83, L. 1971; R.C.M. 1947, 75-7112.

20-9-424. Validation of petition — election administrator's certificate. (1) The petitioners for a school district bond election shall submit their petition to the county election administrator of the county where the school district is located for validation of the signatures on the petition. The county election administrator shall examine the petition and attach or endorse thereon a certificate which shall state:

(a) the total number of electors of the school district who are, at the time, qualified to vote under the provisions of 20-20-301;

(b) which and how many of the individuals whose names are subscribed to the petition possess the qualifications to vote on a bond proposition; and

(c) whether the number of qualified signers established in subsection (1)(b) is more or less than 20% of the total number of registered electors established in subsection (1)(a).

(2) After completing the examination, the county election administrator shall immediately send the petition and his certificate to the school district. The county election administrator shall not receive compensation for the examination of school district bond petitions.

History: En. 75-7113 by Sec. 314, Ch. 5, L. 1971; amd. Sec. 9, Ch. 83, L. 1971; R.C.M. 1947, 75-7113; amd. Sec. 354, Ch. 571, L. 1979.

Cross-References

Local election administrator, Title 13, ch. 1, part 3.

20-9-425. Trustees' consideration of validated petition proposing bond election. When a school district receives a school district bond petition from the county registrar, a meeting of the trustees shall be called for the consideration of the petition. The trustees shall be the judges of the adequacy of the petition, and their findings shall be conclusive against the school district in favor of the innocent holder of bonds issued pursuant to the election called and held by reason of the presentation of such petition. The petition shall be valid if the trustees find that it is in proper form and bears the signatures of not less than 20% of the school district electors who are qualified to vote under the provisions of 20-20-301.

History: En. 75-7114 by Sec. 315, Ch. 5, L. 1971; amd. Sec. 10, Ch. 83, L. 1971; R.C.M. 1947, 75-7114.

Cross-References
Trustees' meetings and quorum, 20-3-322.

20-9-426. Preparation and form of ballots for bond election. The school district shall cause ballots to be prepared for all bond elections, and whenever bonds for more than one purpose are to be voted upon at the same election, separate ballots shall be prepared for each purpose. All such ballots shall be substantially in the following form:

OFFICIAL BALLOT
SCHOOL DISTRICT BOND ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BONDS—YES" if you wish to vote for the bond issue; if you are opposed to the bond issue make an X or similar mark in the square before the words "BONDS—NO".

Shall the board of trustees be authorized to issue and sell bonds of this school district in the amount of .... dollars ($....), bearing interest at a rate not more than .... percent (....%) per annum, payable semiannually, during a period not more than .... years, for the purpose .... (here state the purpose the same way as in the notice of election)?

☐ BONDS — YES.

☐ BONDS — NO.

History: En. 75-7115 by Sec. 316, Ch. 5, L. 1971; amd. Sec. 39, Ch. 234, L. 1971; R.C.M. 1947, 75-7115; amd. Sec. 12, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983.

Cross-References
Form of ballot for consolidation election with assumption of bonded indebtedness, 20-6-206.

20-9-427. Notice of bond election by separate purpose. (1) Any school district bond election shall be conducted in accordance with the school election provisions of this title, except that the election notice required therein shall be in substantially the following form:

NOTICE OF SCHOOL DISTRICT BOND ELECTION

Notice is hereby given by the trustees of School District No. .... of .... County, state of Montana, that pursuant to a certain resolution duly adopted at a meeting of the board of trustees of said school district held on the .... day of ...., A.D., 19.., an election of the registered electors of School District No. .... of .... County, state of Montana, will be held on the .... day of ...., A.D., 19.., at .... for the purpose of voting upon the question of whether or not the trustees shall be authorized to issue and sell bonds of said school district in the amount of .... dollars ($....), bearing interest at a rate not more than .... percent (....%) per annum, payable semiannually, for the purpose of .... (here state purpose). The bonds to be issued will be either amortization or serial bonds, and amortization bonds will be the first choice of the board of trustees. The bonds to be issued, whether amortization or serial bonds, will be payable in installments over a period not exceeding .... (state number) years.

The polls will be open from .... o'clock ....m. and until .... o'clock ....m. of the said day.

Dated and posted this .... day of ...., A.D., 19...

....
Chairman, School District No. ....
of ....County
Address ....

(2) If the bonds proposed to be issued are for more than one purpose, then each purpose shall be separately stated in the notice, together with the proposed amount of bonds therefor.

History: **En. 75-7116 by Sec. 317, Ch. 5, L. 1971; amd. Sec. 40, Ch. 234, L. 1971; amd. Sec. 1, Ch. 176, L. 1973; R.C.M. 1947, 75-7116; amd. Sec. 13, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983.**

Cross-References

Form of ballot for consolidation election with assumption of bonded indebtedness, 20-6-206.

School elections, Title 20, ch. 20.

20-9-428. Determination of approval or rejection of proposition at bond election. (1) When the trustees canvass the vote of a school district bond election under the provisions of 20-20-415, they shall determine the approval or rejection of the school bond proposition in the following manner:

(a) determine the total number of electors of the school district who are qualified to vote under the provisions of 20-20-301 from the list of electors supplied by the county registrar for such school bond election;

(b) determine the total number of qualified electors who voted at the school bond election from the tally sheet or sheets for such election;

(c) calculate the percentage of qualified electors voting at the school bond election by dividing the amount determined in subsection (1)(b) by the amount determined in subsection (1)(a); and

(d) when the calculated percentage in subsection (1)(c) is 40% or more, the school bond proposition shall be deemed to have been approved and adopted if a majority of the votes shall have been cast in favor of such proposition, otherwise it shall be deemed to have been rejected; or

(e) when the calculated percentage in subsection (1)(c) is more than 30% but less than 40%, the school bond proposition shall be deemed to have been approved and adopted if 60% or more of the votes shall have been cast in favor of such proposition, otherwise it shall be deemed to have been rejected; or

(f) when the calculated percentage in subsection (1)(c) is 30% or less, the school bond proposition shall be deemed to have been rejected.

(2) If the canvass of the vote establishes the approval and adoption of the school bond proposition, the trustees shall issue a certificate proclaiming the passage of such proposition and the authorization to issue bonds of the school district for the purposes specified on the ballot for such school district bond election.

History: **En. 75-7117 by Sec. 318, Ch. 5, L. 1971; amd. Sec. 11, Ch. 83, L. 1971; R.C.M. 1947, 75-7117.**

Cross-References

Determination of annexation election with assumption of bonded indebtedness, 20-6-206.

20-9-429. Trustees' resolution to issue school district bonds. Within 60 days after the date of the election certificate or as soon thereafter as is practical in the judgment of the trustees, the trustees shall adopt a resolution providing for the issuance of bonds of the school district. Such resolution also shall specify:

(1) the number of series or installments in which the bonds are to be issued;
(2) the amount of bonds to be issued;
(3) the maximum rate of interest;
(4) the purpose or purposes of the issue;
(5) the date the issue will bear;
(6) the period of time through which the issue will be paid;
(7) the manner of execution of the bonds;
(8) that amortization bonds will be preferred but also fix the denomination of serial bonds; and
(9) the date and time that the sale of the bonds shall be conducted.

History: En. 75-7118 by Sec. 319, Ch. 5, L. 1971; R.C.M. 1947, 75-7118.

20-9-430. Notice of sale of school district bonds. The trustees shall cause the notice of the sale of the bonds to be given. The notice shall state the purpose for which the bonds are to be issued and the amount proposed to be issued and shall be substantially in the following form:

NOTICE OF SALE OF SCHOOL DISTRICT BONDS

Notice is hereby given by the trustees of School District No. .... of .... County, state of Montana, that the trustees will on the .... day of...., 19.., at the hour of .... o'clock ....m. at ...., in the school district, sell to the highest and best bidder for cash either amortization or serial bonds of the school district in the total amount of .... dollars ($....), for the purpose of .....

Amortization bonds will be the first choice and serial bonds will be the second choice of the trustees.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the trustees may determine upon at the time of sale, both principal and interest to be payable in semiannual installments during a period of .... years from the date of issue.

If serial bonds are issued and sold, they will be in the amount of .... dollars ($....) each and will become payable according to the maturity schedule set forth below (set forth maturity schedule adopted by the school district).

The bonds, whether amortization or serial bonds, will bear date of ...., 19.., and will bear interest at a rate not exceeding ....% per annum commencing on the .... day of .... (month), 19.., and payable semiannually on the .... day of .... (month) and .... (month) in each year thereafter and will be redeemable in full. (Here insert optional provisions, if any, to be recited on the bonds.)

The bonds will be sold for not less than their par value with accrued interest, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The bonds shall be sold in open competition bidding, by written bids, or by sealed bids. The trustees reserve the right to reject any and all bids and to sell the bonds at private sale.

All bids other than by or on behalf of the state board of land commissioners must be accompanied by money, a certified check, cashier's check, bank money order, or bank draft drawn and issued by a national banking association located in Montana or by any banking corporation incorporated under the laws of Montana, in the sum of .... dollars ($....) payable to the order of the district, which will be forfeited by the successful bidder in the event that he shall refuse to purchase the bonds.

All bids should be addressed to the undersigned district.

....
Chairman, School District No. ....
of ....County
Address: ....

ATTEST:

Subscribed and sworn to before me this .... day of ....., 19..; .... Notary Public for the State Residing at ...., Montana. My Commission expires ....

History: En. 75-7119 by Sec. 320, Ch. 5, L. 1971; amd. Sec. 41, Ch. 234, L. 1971; amd. Sec. 23, Ch. 266, L. 1977; R.C.M. 1947, 75-7119; amd. Sec. 14, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 8, Ch. 631, L. 1983.

20-9-431. Publication of notice of sale of school district bonds. (1) The trustees shall cause a copy of the notice of sale of the bonds to be published as provided in 17-5-106 in a newspaper as determined by the trustees.

(2) If the bond issue to be sold is $10,000 or more, the trustees may cause a brief notice to be published in some newspaper in the city of New York.

History: En. 75-7120 by Sec. 321, Ch. 5, L. 1971; R.C.M. 1947, 75-7120; amd. Sec. 6, Ch. 384, L. 1979; amd. Sec. 4, Ch. 173, L. 1987.

Compiler's Comments

1987 Amendment: Substituted present (1) for former (1) that read: "(1) The trustees shall cause a copy of the notice of sale of the bonds to be:

(a) published once a week for 4 successive weeks preceding the date of the sale in a newspaper as determined by the trustees;

(b) published once, not less than 30 days prior to the date of sale, in some daily newspaper of the state that has a general circulation throughout the state when the bond issue to be sold is $10,000 or more; and

(c) sent to the board of investments."

20-9-432. Sale of school district bonds. (1) The trustees shall meet at the time and place fixed in the notice to consider bids on the bond issue. The bonds shall be sold at not less than par with accrued interest to date of delivery, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal; and in considering bids on these classes of bonds, the trustees shall take into consideration not only the rate of interest demanded on each kind but also every other known element affecting the total cost of the bonds to the district when paid in full. The trustees shall accept the bid which they shall judge most advantageous to the school district. Consultants' fees and attorney fees may be paid to any person or corporation for assisting in the proceedings or in the preparation of the bonds or in negotiating the sale. The trustees are authorized to reject any or all bids and to sell the bonds at private sale if they deem it for the best interests of the school district, except that such bonds shall not be sold at less than par with accrued interest to date of delivery.

(2) The trustees may cooperate and combine with other school districts within the same county for the purpose of preparing and negotiating for sale of bond issues if, in the opinion of the trustees, such cooperation or combination will facilitate the sale of school district bonds under more advantageous

terms or with lower interest rates. Provided, however, that bond issues prepared or negotiated for sale under this section shall not be combined for any other purpose but shall be entered separately on the books of the county treasurer and shall be otherwise treated as separate bond issues.

History: En. 75-7121 by Sec. 322, Ch. 5, L. 1971; amd. Sec. 10, Ch. 234, L. 1971; amd. Sec. 1, Ch. 66, L. 1974; R.C.M. 1947, 75-7121; amd. Sec. 9, Ch. 631, L. 1983.

20-9-433. Form and printing of school district bonds. (1) It is not necessary for the trustees to prescribe the detailed form of the bonds to be issued, but the bonds must conform to all legal requirements for their payment whether they are issued as amortization or serial bonds. The bonds and coupons shall be issued in the name of the school district and shall be executed by the chairman of the trustees and the school district clerk in accordance with 2-16-114. If the bonds are purchased by the board of investments, all payments of principal or interest shall be made at the office of the state treasurer.

(2) The trustees shall cause the bonds, with the attached coupons, to be printed at the expense of the school district at the lowest commercial rates.

History: En. 75-7122 by Sec. 323, Ch. 5, L. 1971; R.C.M. 1947, 75-7122; amd. Sec. 7, Ch. 384, L. 1979.

Cross-References

County printing, Title 7, ch. 5, part 24.

20-9-434. Registration of school district bonds by county treasurer and copy for preservation. (1) When the school district bonds have been duly executed by the chairman of the trustees and the school district clerk, all such bonds shall be registered by the county treasurer in his bond registration book before such bonds are delivered to the purchaser. The bond registration shall show:

(a) the number and amount of each bond;
(b) the date of issue;
(c) the redeemable date of each bond;
(d) the name of the purchaser; and
(e) the amount and due date of all payments required on the bonds.

(2) The trustees shall provide the county treasurer with an unsigned and canceled printed copy of each issue of school district bonds for preservation in the office of the county treasurer.

History: En. 75-7123 by Sec. 324, Ch. 5, L. 1971; R.C.M. 1947, 75-7123.

20-9-435. Delivery of school district bonds and disposition of sale moneys. (1) After the school district bonds have been registered, the county treasurer shall:

(a) when the board of investments has purchased such bonds, forward the bonds to such state board which, in turn, shall cause the bonds to be sent to the state treasurer and shall cause the bonds to be paid for in the manner provided by law; or

(b) when the purchaser is anybody other than the board of investments, deliver the bonds to such purchaser when full payment of the bonds has been made by the purchaser.

(2) If any of the trustees fails or refuses to pay into the proper county treasury the money arising from the sale of any bonds, he is guilty of a felony

and shall be punished by imprisonment in the state prison for not less than 1 year or more than 10 years, by a fine of not more than $50,000, or by both such fine and imprisonment.

(3) All money realized from the sale of school district bonds shall be paid to the county treasurer, and he shall credit such money to the building fund of the school district issuing the bonds, except money realized for the purposes defined in 20-9-403(1)(c) and (1)(d) shall be deposited in the debt service fund for the purchase of such bonds. The money realized from the sale of school district bonds shall be immediately available to such school district, and the trustees may expend such money without budgeted authorization only for the purposes for which the bonds were authorized by the school district bond election. Under the provisions of 7-6-2802, the trustees may invest the money for which there is no immediate demand and the interest earned by such investment shall be used in the manner provided therein. After the full accomplishment of the purpose or purposes of a bond issue, the excess money realized from such bond issue shall be transferred to the debt service fund of the school district to be used for the redemption or purchase of bonds of such issue.

History: En. 75-7124 by Sec. 325, Ch. 5, L. 1971; R.C.M. 1947, 75-7124; amd. Sec. 8, Ch. 384, L. 1979; amd. Sec. 7, Ch. 198, L. 1981.

20-9-436. County attorney to assist in the proceedings. The trustees of any school district conducting bond proceedings shall prepare and maintain a transcript of their bond proceedings. It is a part of the official duties of the county attorney of every county of this state to advise and assist the trustees of each school district of his county in its bond proceedings. Before any transcript of school district bond proceedings is sent to the board of investments, he shall carefully examine such transcript, and the transcript may not be sent until he has attached his opinion to the transcript that the proceedings are in full compliance with law. The trustees of any school district, however, may, upon consent of the county attorney, employ any attorney licensed in Montana to assist the county attorney in the performance of his duties.

History: En. 75-7125 by Sec. 326, Ch. 5, L. 1971; amd. Sec. 1, Ch. 263, L. 1971; R.C.M. 1947, 75-7125; amd. Sec. 9, Ch. 384, L. 1979.

Cross-References

Conflict of interest, 20-1-205.

20-9-437. School district liable on bonds. The full faith, credit, and taxable resources of every school district issuing bonds under the provisions of this title are hereby solemnly pledged for the repayment of such bonds with interest according to their terms. For the purpose of making the provisions of this part enforceable, every school district is hereby declared to be a body corporate which may sue and be sued by or in the name of the trustees of such school district.

History: En. 75-7126 by Sec. 327, Ch. 5, L. 1971; R.C.M. 1947, 75-7126.

Cross-References

Claims and actions against political subdivisions, Title 2, ch. 9, part 3.

20-9-438. Preparation of debt service fund budget — cash reserve. (1) The trustees of each school district having outstanding bonds shall include in the debt service fund of the preliminary budget adopted in accordance with 20-9-113 an amount of money that is necessary to pay the interest and the principal amount becoming due during the ensuing school fiscal year for each series or installment of bonds, according to the terms and conditions of such bonds and the redemption plans of the trustees.

(2) The trustees shall also include in the debt service fund of the preliminary budget:

(a) the amount of money necessary to pay the special improvement district assessments levied against the school district which become due during the ensuing school fiscal year; and

(b) a limited cash reserve for the school fiscal year following the ensuing school fiscal year as provided in subsection (3).

(3) At the end of each school fiscal year, the trustees of a school district may designate a portion of the end-of-the-year cash balance of the debt service fund to be earmarked as a limited cash reserve for the purpose of paying, whenever a cash flow shortage occurs, debt service fund warrants and bond obligations which must be paid from July 1 through November 30 of the school fiscal year following the ensuing school fiscal year. Any portion of the debt service fund end-of-the-year cash balance not earmarked for limited cash reserve purposes must be reappropriated to be used for property tax reduction as provided in 20-9-439.

(4) The county superintendent shall compare the preliminary budgeted amount for the debt service fund with the bond retirement and interest requirement and the special improvement district assessments for the school fiscal year just beginning as reported by the county treasurer in his statement supplied under the provisions of 20-9-121. If the county superintendent finds that the requirement stated by the county treasurer is more than the preliminary budget amount, the county superintendent shall increase the budgeted amount for interest or principal in the debt service fund of the preliminary budget. The amount confirmed or revised by the county superintendent shall be the final budget expenditure amount for the debt service fund of such school district.

History: En. 75-7127 by Sec. 328, Ch. 5, L. 1971; amd. Sec. 2, Ch. 432, L. 1975; R.C.M. 1947, 75-7127; amd. Sec. 1, Ch. 132, L. 1987.

Compiler's Comments

1987 Amendment: Inserted (2)(b) and (3).

20-9-439. Computation of net levy requirement — procedure when levy inadequate. (1) The county superintendent shall compute the levy requirement for each school district's debt service fund on the basis of the following procedure:

(a) determine the total moneys available in the debt service fund for the reduction of the property tax on the district by totaling:

(i) the end-of-the-year cash balance, less any outstanding warrants in the debt service fund and less any limited cash reserve as provided in 20-9-438;

(ii) anticipated interest to be earned by the investment of debt service cash in accordance with the provisions of 20-9-213(4) or by the investment of bond proceeds under the provisions of 20-9-435; and

(iii) any other moneys anticipated by the trustees to be available in the debt service fund during the ensuing school fiscal year from such sources as legally authorized money transfers into the debt service fund or from rental income;

(b) the total amount available to reduce the property tax, determined in subsection (1)(a), shall be subtracted from the final budget expenditure amount for the debt service fund as established in 20-9-438;

(c) the net debt service fund levy requirement determined in subsection (1)(b) shall be reported to the county commissioners on the second Monday of August by the county superintendent as the net debt service fund levy requirement for the district, and a levy shall be made by the county commissioners in accordance with 20-9-142.

(2) If the board of county commissioners shall fail in any school fiscal year to make a levy for any issue or series of bonds of any school district sufficient to raise the moneys necessary for payment of interest and principal becoming due during the next ensuing school fiscal year, in such amounts as are established under the provisions of this section, the holder of any bond of such issue or series or any taxpayer of the district may apply to the district court of the county in which such school district is located for a writ of mandate to compel the board of county commissioners of such county to make a sufficient levy for such purposes. If, upon the hearing of such application, it shall appear to the satisfaction of the court that the board of county commissioners of such county has failed to make a levy or has made a levy that is insufficient to raise the amount required to be raised as established in the manner provided in this section, the court shall determine the amount of such deficiency and shall issue a writ of mandate directed to and requiring the board of county commissioners, at the next meeting for the purpose of fixing tax levies for county purposes, to fix and make a levy against all taxable property in such school district that is sufficient to raise the amount of such deficiency. Such levy shall be in addition to any levy required to be made at that time for the then-ensuing school fiscal year. Any costs which may be allowed or awarded the petitioner in any such proceeding shall be paid by the members of the board of county commissioners and shall not be a charge against the school district or the county.

History: En. 75-7128 by Sec. 329, Ch. 5, L. 1971; R.C.M. 1947, 75-7128; amd. Sec. 2, Ch. 132, L. 1987.

Compiler's Comments

1987 Amendment: At end of (1)(a)(i) inserted "and less any limited cash reserve as provided in 20-9-438".

Cross-References

Property tax levies, Title 15, ch. 10.

Mandamus, Title 27, ch. 26.

20-9-440. Payment of debt service obligations — termination of interest. (1) The county treasurer shall maintain a separate debt service fund for each school district and shall credit all tax moneys collected for debt service to such fund and use the moneys credited to such fund for the payment of debt service obligations in accordance with the school financial administration provisions of this title.

(2) The county treasurer shall pay from the debt service fund all amounts of interest and principal on school district bonds as such interest or principal becomes due when the coupons or bonds are presented and surrendered for payment and shall pay all special improvement district assessments as the same become due. If the bonds are held by the state of Montana, then all

payments shall be remitted to the state treasurer who shall cancel the coupons or bonds and return such coupons or bonds to the county treasurer with his receipt. If the bonds are not held by the state of Montana and the interest or principal is made payable at some designated bank or financial institution, the county treasurer shall remit the amount due for interest or principal to such bank or financial institution for payment against the surrender of the canceled coupons or bonds.

(3) Whenever any school district bond or installment on school district bonds shall become due and payable, interest shall cease on such date unless sufficient funds are available to pay such bond when it is presented for payment or when payment of an installment is demanded. In either case, interest on such bond or installment shall continue until payment is made.

(4) Any installment on interest and principal on bonds held by the state that is not promptly paid when due shall draw interest at an annual rate of 6% from the date due until actual payment, irrespective of the rate of interest on the bonds.

History: En. 75-7129 by Sec. 330, Ch. 5, L. 1971; amd. Sec. 3, Ch. 432, L. 1975; R.C.M. 1947, 75-7129.

Cross-References

Administration of finances, Title 20, ch. 9, part 2.

20-9-441. Redemption of bonds — investment of debt service fund moneys. (1) Whenever there is a sufficient amount of money in any school district debt service fund available to pay and redeem one or more bonds of such school district held by the state of Montana, the county treasurer shall apply such money in payment of as many of such bonds as can be paid and redeemed. The county treasurer shall give notice not less than 30 days before the next interest due date to the board of investments that on such interest due date such bonds will be paid. Before such interest due date, the county treasurer shall remit to the state treasurer the amount of money that is necessary to pay the bonds that are being redeemed and the interest due on such bonds. When the state treasurer receives such payment, he shall cancel such bonds and any unpaid coupons of such bonds and return the canceled bonds and coupons to the county treasurer.

(2) Whenever there is a sufficient amount of money in any school district debt service fund available to pay and redeem one or more optional bonds of such school district not held by the state of Montana, not yet due but then redeemable or becoming redeemable on the next interest due date, the county treasurer shall apply such available money in payment of as many of such bonds as can be paid and redeemed. The county treasurer shall give notice to the holder of the bonds, if known to him, or to any bank or financial institution at which the bonds are payable, at least 30 days before the next interest due date, that the bonds will be paid and redeemed on such date. If the bonds are payable at some bank or financial institution, the county treasurer shall remit to the bank or financial institution, before such interest due date, an amount sufficient to pay and redeem the bonds. If the bonds are not presented for payment and redemption on such interest due date, the accrual of interest shall cease on such interest due date.

(3) Whenever there is money available in any school district debt service fund sufficient to pay and redeem one or more outstanding bonds not yet due

or redeemable and not held by the state of Montana, the trustees of such school district may direct the county treasurer to purchase such bonds of the district if this can be done at not more than par and accrued interest or at such reasonable premium as the trustees may feel justified in paying, but in no case exceeding 6%.

(4) Whenever the trustees cannot purchase outstanding bonds of the school district at a reasonable price, the available debt service fund money shall be invested by the trustees under the provisions of 20-9-213(4). Such investments shall be sold in ample time before the debt service fund money is required for the payment of the bonds of the school district.

History: En. 75-7130 by Sec. 331, Ch. 5, L. 1971; R.C.M. 1947, 75-7130; amd. Sec. 10, Ch. 384, L. 1979.

20-9-442. Entries of payments and notification of school district. The county treasurer shall make the necessary entries of all payments of interest and principal on his bond registration record and shall promptly notify the clerk of the school district when such payments are made. The county treasurer also shall deliver the canceled coupons and bonds to the county clerk at the end of each month. The county clerk shall file such canceled coupons and bonds in his office.

History: En. 75-7131 by Sec. 332, Ch. 5, L. 1971; R.C.M. 1947, 75-7131.

20-9-443. Disposition of remaining debt service fund. When all of the bonds and bond interest of any school district have been fully paid, all money remaining in the debt service fund for such school district and all moneys which may come into such debt service fund from the payment of the delinquent taxes shall be transferred by the county treasurer to the general fund of such school district.

History: En. 75-7132 by Sec. 333, Ch. 5, L. 1971; R.C.M. 1947, 75-7132.

20-9-444. Liability of officers for failure to provide fund for payment of bonds. When the trustees of a school district are required by law to provide, by a levy of taxes or by certifying the amount of money required or otherwise, a sinking fund or fund required to pay at maturity any bonds issued or created after February 6, 1923, such trustees are jointly and severally liable to the school district which they represent if they fail to perform any duties so required by law, as specified in this section, in an amount equal to the sum which would have been added to such fund had they performed such duty. However, whenever any such board of trustees fails or neglects to perform any such duty, no minority member of the board who moved the board or voted in favor of performance of such duty may be held liable.

History: En. Sec. 1, Ch. 5, L. 1923; re-en. Sec. 463.1, R.C.M. 1935; R.C.M. 1947, 59-534; amd. Sec. 11, Ch. 384, L. 1979.

Cross-References

Penalty for violation of school laws, 20-1-207.
Trustee removal, 20-3-310.
Personal liability of trustees, 20-3-332.

20-9-445. Liability for misuse of bond payment fund. Any person or persons who shall take, use, appropriate, or permit to be taken, used, or appropriated any portion of any such fund as herein specified for any purpose other than that permitted by law shall be jointly and severally liable to the county, city, school district, irrigation district, or other municipal or public corporation to which said fund shall belong for the portion of such fund so unlawfully taken, used, or appropriated.

History: **En. Sec. 2, Ch. 5, L. 1923; re-en. Sec. 463.2, R.C.M. 1935; R.C.M. 1947, 59-535.**

Cross-References

Penalty for violation of school laws, 20-1-207.

Trustee removal, 20-3-310.

Personal liability of trustees, 20-3-332.

20-9-446. Duty of county attorney to prosecute. It shall be the duty of the county attorney in each county to commence and prosecute all actions to enforce any liability created by 20-9-444 or 20-9-445. Such actions shall be tried as civil actions at law.

History: **En. Sec. 3, Ch. 5, L. 1923; re-en. Sec. 463.3, R.C.M. 1935; R.C.M. 1947, 59-536.**

Cross-References

Conflict of interest, 20-1-205.

20-9-447 through 20-9-450 reserved.

20-9-451. County bonding for county high school not placed in high school district. Sections 20-9-452 through 20-9-456 shall be used for the purposes of indebting a county for county high school facilities when the county high school in such county has not been placed in a high school district by the high school boundary commission of the county. The provisions of such sections shall not be available to any county high school that has been placed in a high school district or to any other high school or district.

History: **En. 75-7133 by Sec. 334, Ch. 5, L. 1971; R.C.M. 1947, 75-7133.**

Cross-References

Establishment of high school districts in a county, 20-6-303.

High school boundary commission — procedure for boundary change, 20-6-304.

20-9-452. Purposes and petition for county high school bonds. (1) Any county where a county high school that has not been placed in a high school district is located may become indebted by the issuance of bonds for the purposes of:

(a) purchasing or erecting a building or buildings for high school purposes;

(b) remodeling, enlarging, or repairing a building or buildings for high school purposes;

(c) purchasing equipment for high school purposes;

(d) purchasing, erecting, or equipping a high school dormitory or gymnasium;

(e) purchasing a suitable site or sites for such high school building; or

(f) refunding or redeeming any outstanding bonds originally issued for any of the foregoing purposes.

(2) In order to initiate any bonding proposition for the above purposes:

(a) the trustees of a county high school may initiate and adopt a resolution in accordance with the provisions of 20-9-422 requesting the board of county commissioners to submit such bond proposition to the qualified electors of the county; or

(b) a petition signed by not less than 20% of the electors of the county who are qualified under 20-20-301 may be presented to the trustees of the county high school. Such petition shall request the submission of a bond proposition to the qualified electors of the county and shall specify the purpose or purposes of the proposed bond issue and the amount of bonds to be issued. Such petition shall conform with the petition requirements prescribed in 20-9-423. If the trustees of the county high school approve a validated petition for a bond proposition, they shall request the board of county commissioners of the county to submit such bond proposition to the qualified electors of the county.

History: **En. 75-7134 by Sec. 335, Ch. 5, L. 1971; amd. Sec. 12, Ch. 83, L. 1971; R.C.M. 1947, 75-7134; amd. Sec. 1, Ch. 42, L. 1985.**

Cross-References

Refunding bonds, Title 17, ch. 5, part 3.

School property, Title 20, ch. 6, part 6.

20-9-453. Duty of board of county commissioners to call election and issue bonds. Immediately upon the receipt of any bond proposition request from the trustees of the county high school, it shall be the duty of the board of county commissioners to submit such question to the qualified electors of the county in the manner otherwise provided by law for the submission of the proposition of the issuance of other county bonds. If a majority of the qualified electors of the county voting upon the proposition so submitted shall approve such issue, then the board of county commissioners shall issue and market the bonds authorized as in the case of other county bonds.

History: **En. 75-7135 by Sec. 336, Ch. 5, L. 1971; R.C.M. 1947, 75-7135.**

Cross-References

Bond issues, Title 17, ch. 5.

Preparation and form of ballots for bond election, 20-9-426.

Notice of bond election by separate purpose, 20-9-427.

20-9-454. Proration of county bond proceeds between high schools of the county. In any county where a county high school is located and such county high school is not located in a county that has been divided into high school districts and another high school is maintained by an elementary district of the county, bonds of the county may likewise be issued in accordance with the provisions of 20-9-452 and 20-9-453. The proceeds of such issue shall be divided among the county high school and the districts maintaining a high school. The question submitted to the electors of the county shall state the amount which is to be allotted to the county high school and the amount which is to be apportioned to or among such districts. In all such cases, the amount allotted to the county high school and the amount to be apportioned among the districts shall be computed upon the basis of the taxable valuation of the county that is used for county high school property taxation purposes and the taxable valuation of the districts maintaining a high school. Any such bond moneys apportioned to a district shall not be expended until the purpose for the expenditure has been approved by a vote of the qualified electors at an election held in the same manner prescribed for a school district bond election.

History: **En. 75-7136 by Sec. 337, Ch. 5, L. 1971; R.C.M. 1947, 75-7136.**

20-9-455. Payment of county bonds. All bonds authorized and issued for a county high school not located in a high school district shall be paid, both principal and interest, in the manner provided by law for the payment of other bonds of the county.

History: **En. 75-7137 by Sec. 338, Ch. 5, L. 1971; R.C.M. 1947, 75-7137.**

Cross-References

Investment of proceeds arising from sale of county high school construction bonds, 7-6-2802.

20-9-456. Budget prohibition when county bonds issued. In all cases where bonds of the county are issued for county high school purposes, the trustees of the county high school shall not budget for any item of expense or disbursement for the purposes for which such county bonds have been issued.

History: **En. 75-7138 by Sec. 339, Ch. 5, L. 1971; R.C.M. 1947, 75-7138.**

20-9-457 through 20-9-460 reserved.

20-9-461. Purpose. Sections 20-9-461 through 20-9-464 are intended to improve the marketability of bonds issued by school districts in order that said bonds may be sold upon the most favorable terms.

History: **En. Sec. 4, Ch. 139, L. 1939; R.C.M. 1947, 82-413(part).**

20-9-462. Bond issue proceedings to be submitted to attorney general. The governing body of any school district shall submit a certified copy of all proceedings preliminary to such bond issue to the attorney general, together with such other proceedings, certificates, and records as he may require, and request his report as to examination and validity.

History: **En. Sec. 1, Ch. 139, L. 1939; R.C.M. 1947, 82-410(part).**

20-9-463. Attorney general to report as to validity of bonds. It is hereby made the duty of the attorney general to examine certified copies of all proceedings preliminary to the issuance of bonds by any school district which may be submitted to him for such examination, and if found regular and valid, he shall deliver to the recording officer of such district a report of his examination and determination as to the validity of such bonds. A certified copy of such report shall be filed with the officer required by law to register said bonds, and a notation thereof shall be entered in the bond register.

History: **En. Sec. 2, Ch. 139, L. 1939; R.C.M. 1947, 82-411(part).**

Cross-References

Bond Validating Act, Title 17, ch. 5, part 2.

20-9-464. Statute of limitations — action to test validity. No bond of any issue, whereof the preliminary proceedings have been submitted to and approved by the attorney general, shall be held invalid because of any defect or failure to comply with any statutory provision relating to the authorization, issuance, or sale of said bonds, unless an action to contest the validity thereof shall be brought within 30 days after the date of sale.

History: **En. Sec. 3, Ch. 139, L. 1939; R.C.M. 1947, 82-412(part).**

Cross-References

Bond Validating Act, Title 17, ch. 5, part 2.

20-9-465. Action to restrain bond issue — time for bringing. (1) No action may be brought for the purpose of restraining the issuance and sale of bonds or other obligations by any school district or for the purpose of restraining the levy and collection of taxes for the payment of such bonds or other obligations after the expiration of 60 days from the date of the election on such bonds or obligations or, if no election was held thereon, after the expiration of 60 days from the date of the resolution authorizing the issuance thereof on account of any defect, irregularity, or informality in giving notice of or in holding the election; nor may any defense based upon any such defect, irregularity, or informality be interposed in any action unless brought within this period.

(2) This section applies but is not limited to any action and defense in which the issue is raised whether a voted debt or liability has carried by the required majority vote of the electors qualified and offering to vote thereon.

History: En. Sec. 1, Ch. 114, L. 1919; re-en. Sec. 9040, R.C.M. 1921; re-en. Sec. 9040, R.C.M. 1935; amd. Sec. 15, Ch. 158, L. 1971; R.C.M. 1947, 93-2612(part); amd. Sec. 12, Ch. 384, L. 1979.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Property tax levies, Title 15, ch. 10.

Bond Validating Act, Title 17, ch. 5, part 2.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Part 5

Special Purpose Funds

Part Cross-References

Management of school money, Title 7, ch. 6, part 28.

Bus depreciation reserve fund, 20-10-147.

School food services fund, 20-10-204, 20-10-207.

20-9-501. Retirement fund. (1) The trustees of any district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to such systems. The district's contribution for each employee who is a member of the teachers' retirement system shall be calculated in accordance with Title 19, chapter 4, part 6. The district's contribution for each employee who is a member of the public employees' retirement system shall be calculated in accordance with 19-3-801. The district may levy a special tax to pay its contribution to the public employees' retirement system under the conditions prescribed in 19-3-204. The district's contributions for each employee covered by any federal social security system shall be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance shall be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of any district required to make a contribution to any such system shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution and such additional moneys, within legal limitations, as they may wish to provide for the retirement fund cash reserve. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to such systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the moneys available to reduce the retirement fund levy requirement by adding:

(i) any anticipated moneys that may be realized in the retirement fund during the ensuing school fiscal year, including anticipated revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537;

(ii) net proceeds taxes for interim production and new production, as defined in 15-23-601; and

(iii) any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the retirement fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the retirement fund. The retirement fund cash reserve shall not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and shall be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(b) subtracting the total of the moneys available for reduction of the levy requirement as determined in subsection (3)(a) from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements;

(b) reduce the total retirement fund levy requirements of elementary school districts and high school districts by the amount available in state retirement equalization aid as calculated and distributed under the provisions of 20-9-532; and

(c) report each such levy requirement to the county commissioners on the second Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(5) The county commissioners shall fix and set such county levy in accordance with 20-9-142.

(6) The net retirement fund levy requirement for a joint elementary district or a joint high school district shall be prorated to each county in which a part of such district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each such county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements shall be prorated to each county in which such district is located in the same proportion as the budget for the special education cooperative agreement of the district bears to the total budget of the cooperative. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151 and fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152. *(Subsection (4)(b) effective July 1, 1988—sec. 8, Ch. 635, L. 1987.)*

History: En. 75-7204 by Sec. 343, Ch. 5, L. 1971; amd. Sec. 1, Ch. 281, L. 1973; amd. Sec. 1, Ch. 202, L. 1975; amd. Sec. 1, Ch. 121, L. 1977; R.C.M. 1947, 75-7204; amd. Sec. 2, Ch. 57,

L. 1979; amd. Sec. 3, Ch. 481, L. 1979; amd. Sec. 5, Ch. 699, L. 1983; amd. Sec. 16, Ch. 695, L. 1985; amd. Sec. 19, Ch. 611, L. 1987; amd. Sec. 4, Ch. 635, L. 1987; amd. Sec. 23, Ch. 655, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 611 in (3)(a)(i), after "anticipated", substituted "revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537" for "motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536".

Chapter 635 inserted (4)(b); and made minor changes in phraseology.

Chapter 655 in (3)(a)(ii), before "new production", inserted "interim production and".

Cross-References

Participation of teachers in social security system, Title 19, ch. 1, part 8.

School fiscal year, 20-1-301.

Special funding provisions for special education cooperatives, 20-7-451.

Administration of finances, Title 20, ch. 9, part 2.

20-9-502. Purpose and authorization of a building reserve fund by an election. (1) The trustees of any district, with the approval of the qualified electors of the district, may establish a building reserve for the purpose of raising money for the future construction, equipping, or enlarging of school buildings or for the purpose of purchasing land needed for school purposes in the district. In order to submit to the qualified electors of the district a building reserve proposition for the establishment of or addition to a building reserve, the trustees shall pass a resolution that specifies:

(a) the purpose or purposes for which the new or addition to the building reserve will be used;

(b) the duration of time over which the new or addition to the building reserve will be raised in annual, equal installments;

(c) the total amount of money that will be raised during the duration of time specified in subsection (1)(b); and

(d) any other requirements under 20-20-201 for the calling of an election.

(2) The total amount of building reserve when added to the outstanding indebtedness of the district shall not be more than 45% of the taxable value of the taxable property of the district. Such limitation shall be determined in the manner provided in 20-9-406. A building reserve tax authorization shall not be for more than 20 years.

(3) The election shall be conducted in accordance with the school election laws of this title, and the electors qualified to vote in the election shall be qualified under the provisions of 20-20-301. The ballot for a building reserve proposition shall be substantially in the following form:

OFFICIAL BALLOT
SCHOOL DISTRICT BUILDING RESERVE ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BUILDING RESERVE—YES" if you wish to vote for the establishment of a building reserve (addition to the building reserve); if you are opposed to the establishment of a building reserve (addition to the building reserve) make an X or similar mark in the square before the words "BUILDING RESERVE—NO".

Shall the trustees be authorized to impose an additional levy each year for .... years to establish a building reserve (add to the building reserve) of this school district to raise a total amount of .... dollars ($....), for the purpose(s) .... (here state the purpose or purposes for which the building reserve will be used)?

☐ BUILDING RESERVE—YES.

☐ BUILDING RESERVE—NO.

(4) The building reserve proposition shall be approved if a majority of those electors voting at the election approve the establishment of or addition to such building reserve. The annual budgeting and taxation authority of the trustees for a building reserve shall be computed by dividing the total authorized amount by the specified number of years. The authority of the trustees to budget and impose the taxation for the annual amount to be raised for the building reserve shall lapse when, at a later time, a bond issue is approved by the qualified electors of the district for the same purpose or purposes for which the building reserve fund of the district was established. Whenever a subsequent bond issue is made for the same purpose or purposes of a building reserve, the money in the building reserve shall be used for such purpose or purposes before any money realized by the bond issue is used.

History: En. 75-7205 by Sec. 344, Ch. 5, L. 1971; amd. Sec. 13, Ch. 83, L. 1971; amd. Sec. 1, Ch. 29, L. 1975; R.C.M. 1947, 75-7205; amd. Sec. 62, Ch. 614, L. 1981.

Cross-References

Mail ballot elections prohibited, 13-19-104.

School property, Title 20, ch. 6, part 6.

20-9-503. Budgeting, tax levy, and use of the building reserve fund. (1) Whenever an annual building reserve authorization to budget is available to a district, the trustees shall include such authorized amount in the building reserve fund of the preliminary budget. The county superintendent shall report such amount as the building reserve fund levy requirement to the county commissioners on the second Monday of August, and a levy on the district shall be made by the county commissioners in accordance with 20-9-142.

(2) The trustees of any district maintaining a building reserve fund shall have the authority to expend moneys from such fund for the purpose or purposes for which it was authorized without such specific expenditures being included in the final budget when, in their discretion, there is a sufficient amount of money to commence the authorized projects. Such expenditures shall not invalidate the district's authority to continue the annual imposition of the building reserve taxation authorized by the electors of the district.

(3) Whenever there is money credited to the building reserve fund for which there is no immediate need, the trustees may invest such money in accordance with 20-9-213(4). The interest earned from the investment shall be credited to the building reserve fund or the debt service fund, at the discretion of the trustees, and expended for any purpose authorized by law for such fund.

History: En. 75-7206 by Sec. 345, Ch. 5, L. 1971; R.C.M. 1947, 75-7206.

20-9-504. Extracurricular fund for pupil functions. (1) The government of the pupils of the school within a district or the administration of a school on behalf of the pupils may establish an extracurricular fund for the purposes of the receipts and expenditures of money collected for pupil extracurricular functions with the approval of the trustees of the district. All extracurricular moneys of any pupil organization of the school shall be deposited and expended by check from a bank account maintained for the extracurricular fund.

(2) An accounting system for the extracurricular fund recommended by the department of commerce shall be implemented by the trustees. Such accounting system shall provide for:

(a) the internal control of the cash receipts and expenditures of the money; and

(b) a general account that can be reconciled with the bank account for the extracurricular fund and reconciled with the detailed accounts within the extracurricular fund maintained for each student function.

History: En. 75-6323 by Sec. 136, Ch. 5, L. 1971; amd. Sec. 1, Ch. 349, L. 1971; amd. Sec. 1, Ch. 218, L. 1973; amd. Sec. 17, Ch. 380, L. 1975; R.C.M. 1947, 75-6323; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

20-9-505. Purpose and establishment of nonoperating fund. (1) The trustees of any district that will not operate any school during the ensuing school fiscal year shall establish a nonoperating fund on the first day of such school fiscal year. In establishing the nonoperating fund, the trustees shall cause the transfer of the end-of-the-year cash balance of each fund maintained by the district during the immediately preceding school fiscal year to the nonoperating fund. However, cash balances of the debt service fund and the miscellaneous federal programs fund, if any, shall be maintained in their individual funds.

(2) The trustees of a district establishing a nonoperating fund for the first year of nonoperation may earmark a portion of the nonoperating fund cash balance as a nonoperating fund cash reserve when they anticipate the reopening of a school in the following school fiscal year. Such cash reserve shall not be more than the general fund cash reserve designated for the immediately preceding school fiscal year. If a school is not operated in the following school fiscal year, the authority of the trustees to earmark a nonoperating fund cash reserve shall terminate and the moneys earmarked as a cash reserve shall be used to reduce the levy requirement of the nonoperating fund. If the trustees acquire approval to reopen a school in the following school fiscal year under the provisions of 20-6-502 or 20-6-503 and operate such school, the nonoperating fund cash reserve shall be restored as the general fund cash reserve.

(3) The purpose of the nonoperating fund shall be to centralize the financing and budgeting for the limited functions of a district not operating a school. Such functions shall include:

(a) elementary tuition obligations to other districts;

(b) transportation of the resident pupils;

(c) maintenance of district-owned property; and

(d) any other nonoperating school function of the district deemed necessary by the trustees or required by law.

(4) Any expenditure of nonoperating fund moneys shall be made in accordance with the financial administration provisions of this title for a budgeted fund.

History: En. 75-7209 by Sec. 348, Ch. 5, L. 1971; R.C.M. 1947, 75-7209.

Cross-References

School fiscal year, 20-1-301.

Elementary district abandonment, 20-6-209.

Joint elementary district abandonment, 20-6-210.

High school district abandonment, 20-6-307.

20-9-506. Budgeting and net levy requirement for nonoperating fund. (1) The trustees of any district which does not operate a school or will not operate a school during the ensuing school fiscal year shall adopt a nonoperating school district budget in accordance with the school budgeting provisions of this title. Such nonoperating budget shall contain the nonoperating fund and, when appropriate, a debt service fund. The nonoperating budget form shall be promulgated and distributed by the superintendent of public instruction under the provisions of 20-9-103.

(2) After the adoption of a final budget for the nonoperating fund, the county superintendent shall compute the net levy requirement for such fund by subtracting from the amount authorized by such budget the sum of:

(a) the end-of-the-year cash balance of the nonoperating fund or, if it is the first year of nonoperation, the cash balance determined under the transfer provisions of 20-9-505;

(b) the estimated state and county transportation reimbursements; and

(c) any other moneys that may become available during the ensuing school fiscal year.

(3) The county superintendent shall report the net nonoperating fund levy requirement and any net debt service fund levy requirement determined under the provisions of 20-9-439 to the county commissioners on the second Monday of August, and such levies shall be made on the district by the county commissioners in accordance with 20-9-142.

History: En. 75-7210 by Sec. 349, Ch. 5, L. 1971; R.C.M. 1947, 75-7210.

Cross-References

Property tax levies, Title 15, ch. 10.

State transportation reimbursement, 20-10-145.

County transportation reimbursement, 20-10-146.

20-9-507. Miscellaneous programs fund. (1) The trustees of any district receiving grants of state or federal moneys other than moneys under the provisions of Title I of Public Law 81-874 or federal moneys designated for deposit in a specific fund of the district shall establish a miscellaneous programs fund for the deposit of such moneys. Such moneys may be a reimbursement of expenditures already realized by the district or may be a grant of moneys for the financing of expenditures to be realized by the district for a special, approved program to be operated by the district. When the moneys are a reimbursement, the moneys shall be expended at the discretion of the trustees for school purposes. When the moneys are a grant, the moneys shall be expended according to the conditions of the program approval by the superintendent of public instruction or any other approval agent. Within the miscellaneous programs fund, the trustees shall cause a separate accounting to be maintained for each federal grant program and for the aggregate of all reimbursement moneys.

(2) The financial administration of the miscellaneous programs fund shall be in accordance with the financial administration provisions of this title for a nonbudgeted fund which shall be applied by individual grant programs or for the aggregate amount of the reimbursement moneys rather than on the basis of the total fund.

History: En. 75-7212 by Sec. 351, Ch. 5, L. 1971; R.C.M. 1947, 75-7212; amd. Sec. 5, Ch. 310, L. 1979.

Cross-References

Administration of finances, Title 20, ch. 9, part 2.

20-9-508. Building fund. (1) The trustees of any district shall establish or credit the building fund whenever such district:

(a) issues and sells bonds under the school district bonding provisions of this title for purposes other than refunding bonds of the district;

(b) receives federal money for the express purpose of building, enlarging, or remodeling a school building or other building of the district;

(c) sells property of the district in accordance with the law authorizing such sale;

(d) receives money as an insurance settlement for the destruction of any property or portion of property insured by the district;

(e) earns interest from the investment of building fund moneys under the provisions of 20-9-213(4), except interest earned from the investment of bond moneys under the provisions of 20-9-435 shall be credited to a fund in accordance with such section; or

(f) receives any other moneys for the express purpose of building, enlarging, or remodeling a school building or other building of the district.

(2) The financial administration of the building fund shall be in accordance with the financial administration provisions of this title for a nonbudgeted fund and shall provide for a separate accounting of the moneys realized by each bond issue or by each construction project financed by a federal grant of moneys. Any other moneys to the credit of this fund shall be expended for building, enlargement, remodeling, or repairing of buildings of the district at the discretion of the trustees.

(3) Moneys credited to the building fund under the provisions of subsection (1)(a) of this section shall be expended for the express purpose or purposes authorized by the bond proposition approved at the election authorizing the issuance of such bonds. Any money realized by the sale of bonds and remaining to the credit of the building fund after the full accomplishment of the purpose for which the bonds were sold shall be transferred to the debt service fund to be used for the redemption of bonds of such issue.

(4) Moneys credited to the building fund under the provisions of subsection (1)(b) of this section shall be expended for the express purpose or purposes authorized by the federal government in granting such moneys.

History: En. 75-7213 by Sec. 352, Ch. 5, L. 1971; R.C.M. 1947, 75-7213.

Cross-References

Trustees' authority to acquire or dispose of sites and buildings, 20-6-603.

Sale of property when resolution passed after hearing, 20-6-604.

Administration of finances, Title 20, ch. 9, part 2.

Lease or sale of district property, 20-15-107.

20-9-509. Lease or rental agreement fund. (1) The trustees of any district that provides pupil or teacher housing in district-owned buildings under a lease or rental agreement with pupils or teachers or receives moneys under the provision of 20-6-607 may establish a lease or rental agreement fund. All moneys received from such lease or rental agreements may be deposited with the county treasurer to the credit of the lease or rental agreement fund, general fund, the debt service fund, or any other appropriate fund. Whenever the end-of-the-year cash balance of a lease or rental agreement fund is more than $10,000, such cash balance in excess of $10,000 shall be transferred to the general fund of the district.

(2) Any expenditure of moneys from a lease or rental agreement fund shall be made for the maintenance and operation of the district-owned buildings to which the lease or rental agreements apply or for the acquisition of additional housing or dormitory facilities. The financial administration of the lease or rental agreement fund shall be in accordance with the financial administration provisions of this title for a nonbudgeted fund.

History: En. 75-7214 by Sec. 353, Ch. 5, L. 1971; amd. Sec. 1, Ch. 88, L. 1973; amd. Sec. 4, Ch. 424, L. 1977; R.C.M. 1947, 75-7214; amd. Sec. 1, Ch. 58, L. 1983; amd. Sec. 1, Ch. 135, L. 1987.

Compiler's Comments

1987 Amendment: Throughout section changed fund name from "housing and dormitory fund" to "lease or rental agreement fund".

Cross-References

Leasing district property and disposition of any rentals, 20-6-607.

20-9-510. Traffic education fund. The trustees of any district offering a state reimbursed traffic education program shall establish a traffic education fund under the provisions of 20-7-507. Such fund shall be a nonbudgeted fund and shall be financially administered under the provisions of this title for a nonbudgeted fund.

History: En. 75-7215 by Sec. 354, Ch. 5, L. 1971; R.C.M. 1947, 75-7215.

20-9-511. Interlocal cooperative agreement fund. The trustees of any district serving as a prime agency under an interlocal cooperative agreement shall establish an interlocal cooperative fund under the provisions of 20-9-703 for the financial administration of the interlocal cooperative agreement. Such fund shall be a nonbudgeted fund and shall be financially administered under the provisions of this title for a nonbudgeted fund.

History: En. 75-7216 by Sec. 355, Ch. 5, L. 1971; R.C.M. 1947, 75-7216.

Cross-References

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

20-9-512. Reserve fund for payment of accumulated sick leave. (1) The trustees of any school district may establish a reserve fund for the purpose of paying any accumulated amount of sick leave that a nonteaching school district employee is entitled to upon termination of employment with the district in accordance with the provisions of 2-18-618. Such a reserve fund may be used only for the stated purpose of this section.

(2) At the end of each school fiscal year, the trustees may appropriate a portion of the general fund end-of-the-year cash balance to establish such a reserve fund.

(3) The maximum amount in a reserve fund established under the provisions of subsections (1) and (2) may not exceed 30% of the total school district liability for accumulated sick leave of nonteaching school district employees on January 15 of the preceding school fiscal year.

History: En. Sec. 1, Ch. 138, L. 1981.

Cross-References

School fiscal year, 20-1-301.

20-9-513. Vocational-technical center and adult basic education programs account established. There is within the state special revenue fund a vocational-technical center and adult basic education account. Money is paid into the account under 90-6-211. The state treasurer shall draw warrants payable from this account upon order of the superintendent of public instruction or the board of regents up to the amount provided for each under 90-6-211 by the biennium budget passed by the legislature.

History: En. Sec. 1, Ch. 384, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 24, Ch. 658, L. 1987.

Compiler's Comments

1987 Amendment: In first sentence, before "vocational-technical", deleted "postsecondary" and at end inserted "or the board of regents up to the amount provided for each under 90-6-211 by the biennium budget passed by the legislature".

Cross-References

Vocational and technical education, Title 20, ch. 7, part 3.

Adult education, Title 20, ch. 7, part 7.

Disposition of education trust fund, 90-6-211.

20-9-514 through 20-9-530 reserved.

20-9-531. *(Effective July 1, 1988)* **State retirement equalization account — authorization to appropriate.** There is a state retirement equalization account in the state special revenue fund. Money determined in 20-9-532 must be deposited in the account. The legislature may appropriate the money in the account to the superintendent of public instruction to assist the counties in equalizing a portion of the retirement fund obligations as provided in 20-9-501.

History: En. Sec. 1, Ch. 635, L. 1987.

20-9-532. *(Effective July 1, 1988)* **Calculation and distribution of retirement equalization aid.** (1) The superintendent of public instruction shall administer the distribution of retirement equalization aid by:

(a) determining the estimated revenue available from the net lottery revenue as provided in 23-5-1027;

(b) establishing a list containing each county that levied in the prior school fiscal year in excess of 9 mills to fund its required contribution for retirement fund obligations;

(c) establishing the estimated dollar amount per average number belonging (ANB) by dividing the amount determined in subsection (1)(a) by the total ANB of the counties listed pursuant to subsection (1)(b) for the prior school fiscal year;

(d) notifying the county superintendent of each county listed in subsection (1)(b) by the fourth Monday in July of the estimated retirement equalization aid available to the county, calculated separately for elementary and high school districts and prorated as specified in 20-9-501 for any joint school district, so that each county superintendent may use the amounts in the manner prescribed in 20-9-501 to calculate the retirement fund levy requirements for elementary and high school districts in the county;

(e) distributing by October 1 the amount of retirement equalization aid for each county listed pursuant to subsection (1)(b); and

(f) keeping a record of the complete data concerning revenue available for retirement equalization aid and the distribution of such aid.

(2) If the actual proceeds available for retirement equalization are not sufficient to finance the estimated dollar amount per ANB provided for in subsection (1)(c), each county listed pursuant to subsection (1)(b) must receive a prorated amount.

History: **En. Sec. 2, Ch. 635, L. 1987.**

Part 6

Public School Fund and Grants to Schools

20-9-601. Public school fund. The public school fund shall be maintained by the state treasurer as a fund in the nonexpendable trust fund type, and the principal amount of such fund shall be irreducible and permanent. The following moneys shall be credited to such fund as an addition to the irreducible and permanent principal amount:

(1) appropriations and donations by the state;

(2) donations and bequests by individuals to the state or schools;

(3) the proceeds of land and other property which revert to the state by escheat and forfeiture;

(4) the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain;

(5) funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law;

(6) the proceeds of the sale of timber, stone, materials, or other property from school lands other than those granted for specific purposes and all moneys other than rental recovered from persons trespassing on such lands;

(7) the principal of all moneys arising from the sale of lands and other property which have been and may be hereafter granted to the state for the support of common schools;

(8) the amount earmarked for deposit in this fund under the provisions of 20-9-341; and

(9) such other moneys as may be provided by the legislature.

History: **En. 75-7301 by Sec. 356, Ch. 5, L. 1971; R.C.M. 1947, 75-7301; amd. Sec. 16, Ch. 281, L. 1983.**

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.

Public school fund inviolate, Art. X, sec. 3, Mont. Const.

Board of Land Commissioners, Art. X, sec. 4, Mont. Const.

Public school fund revenue, Art. X, sec. 5, Mont. Const.

Escheated estates, Title 72, ch. 14.

20-9-602. Title to farm mortgage lands vested in state and transfers validated. (1) The transfer of farm mortgage lands, made by Chapter 250, Laws of 1953, shall be deemed to have vested title in such lands in the state of Montana in trust for the state public school fund.

(2) All contracts, certificates of purchase, deeds, and conveyances executed by the state of Montana in the administration of such lands since March 11, 1953, shall be deemed sufficient in law to dispose of the right, title, and interest therein described by the state of Montana.

History: **En. 75-7302 by Sec. 357, Ch. 5, L. 1971; R.C.M. 1947, 75-7302.**

20-9-603. Acceptance and expenditure of federal moneys for state. (1) The governor and the superintendent of public instruction are authorized on behalf of the state of Montana to request and accept such moneys as are now or will be made available under any act of congress of the United States or otherwise for purposes of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Such moneys shall be deposited by the governor and superintendent of public instruction in the state treasury and are appropriated and made available to the superintendent of public instruction. All such moneys shall be expended for the purpose of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government.

(2) The governor and superintendent of public instruction are further authorized on behalf of the state of Montana to accept moneys provided from federal sources for the express purpose of distribution to nonpublic education. Such moneys shall be deposited by the governor and superintendent of public instruction in the state treasury and are appropriated and made available to the superintendent of public instruction. All such moneys shall be distributed in the manner provided by the laws of the state of Montana and as authorized or expressed by grants from the federal government.

(3) All expenditures of moneys from federal sources under this section shall be made under the supervision and in the discretion of the superintendent of public instruction. Any balance in the account in which such moneys are maintained shall not lapse at any time but shall be continuously available to the superintendent of public instruction for expenditures consistent with this title and acts of the federal government.

History: En. 75-7303 by Sec. 358, Ch. 5, L. 1971; amd. Sec. 1, Ch. 34, L. 1973; (amd. Sec. 7, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 7, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7303.

Cross-References

Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.

Power to accept gifts, 20-6-601.

Trustees' authority to acquire or dispose of sites and buildings — when election required, 20-6-603.

20-9-604. Gifts, legacies, devises, and administration of endowment fund. (1) The trustees of any district may accept gifts, legacies, and devises, subject to the conditions imposed by the deed of the donor or the will of the testator or without any conditions imposed. Unless otherwise specified by the donor, devisor, or testator, when a district receives a gift, legacy, or devise, the trustees shall deposit such gift, legacy, devise, or the proceeds therefrom in an endowment fund. The trustees shall administer the endowment fund so as to preserve the principal from loss, and only the income from the fund shall be appropriated for any purpose.

(2) Unless the conditions of the endowment instrument require an immediate disbursement of the money, the money deposited in the endowment fund shall be invested by the trustees, notwithstanding the provisions of any other state law, in:

(a) school district bonds of the district;

(b) bonds of other school districts within the state;

(c) first mortgage bonds, debentures, notes, and other evidences of indebtedness issued, assumed, or guaranteed by any solvent and operating public utility corporation existing under the laws of the United States of America or any state thereof, which bonds, debentures, notes, and other evidences of indebtedness are, at the time of such investment, within the three highest quality grades for the rating of such bonds, debentures, notes, and other evidences of indebtedness by any nationally recognized investment rating agency;

(d) certificates of deposit of Montana banks insured by the federal deposit insurance corporation; or

(e) direct obligations of the United States government.

(3) All interest collected on the deposits or investments shall be credited to the endowment fund. No portion of the endowment fund may be loaned to the district nor may any money of the fund be invested in warrants of the district.

(4) Whenever any district has been abandoned, the endowment fund of the abandoned district shall be transferred and placed in the endowment fund in the district to which the territory is attached.

(5) As the custodian of the endowment fund, the county treasurer is liable on his official bond for the endowment fund of any district of the county. No later than July 1 each school fiscal year, the county treasurer shall account to the trustees of each district on the condition of its endowment fund including the status of the investments that have been made with the money of the fund. The county treasurer shall also include the endowment fund in his reports to the board of county commissioners.

(6) The trustees of any district having an endowment fund shall provide suitable memorials for all persons or associations of persons making gifts to the district which become a part of the endowment fund.

History: En. 75-7309 by Sec. 364, Ch. 5, L. 1971; amd. Sec. 1, Ch. 342, L. 1971; amd. Sec. 24, Ch. 266, L. 1977; R.C.M. 1947, 75-7309.

Cross-References

General provisions related to official bonds, Title 2, ch. 9, part 5.

Power to accept gifts, 20-6-601.

Part 7

Educational Cooperative Agreements

Part Cross-References

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

Authorization to create full service special education cooperatives, 20-7-451.

20-9-701. Definitions of prime and cooperating agencies. For the purposes of an interlocal cooperative agreement, the prime agency shall be the district or other public agency vested with the financial administration of the interlocal cooperative agreement under the terms of such agreement and the cooperating agency shall be any district or public agency other than a prime agency who is a party to the contract creating the interlocal cooperative agreement.

History: En. 75-7305 by Sec. 360, Ch. 5, L. 1971; R.C.M. 1947, 75-7305.

20-9-702. Financial administration of interlocal cooperative agreement. Any district contracting with other districts or other public agencies to establish an interlocal cooperative agreement under the provisions of

Title 7, chapter 11, part 1, shall be subject to the provisions of 20-9-701, 20-9-703, and 20-9-704 for the purposes of the financial administration of such agreement.

History: **En. 75-7304 by Sec. 359, Ch. 5, L. 1971; R.C.M. 1947, 75-7304.**

20-9-703. District as prime agency. (1) When the prime agency is a district, it is authorized and required to establish a nonbudgeted interlocal cooperative fund for the purpose of the financial administration of the interlocal cooperative agreement. All revenues received, including federal, state, or other types of grant payments in direct support of the agreement and the financial support provided by cooperating agencies, shall be deposited in such fund. All financial support of the agreement contributed by a district designated as the prime agency may be transferred to the interlocal cooperative fund from any fund maintained by such district by resolution of the trustees. Any such transfer to the interlocal cooperative fund shall be used to finance those expenditures under the agreement which are comparable to those that are permitted by law to be made out of the fund from which the transfer was made and which are within the final budget for the fund from which the transfer was made. No transfer shall be made from the miscellaneous federal programs fund without the express approval of the superintendent of public instruction.

(2) All expenditures in support of the interlocal cooperative agreement shall be made from the interlocal cooperative fund established by the district which is the prime agency, except that expenditures in support of such agreement may be made from the miscellaneous federal programs fund when the express approval of the superintendent of public instruction is given.

History: **En. 75-7306 by Sec. 361, Ch. 5, L. 1971; R.C.M. 1947, 75-7306.**

20-9-704. District as cooperating agency. (1) When a district is the cooperating agency, it shall transfer its financial support under the interlocal cooperative contract to the prime agency by district warrant.

(2) The financial support may be provided from any fund maintained by the district. Any such fund utilized for the financial support of an interlocal cooperative agreement shall finance only those expenditures of such agreement that are comparable to those permitted under the statutory provisions creating such fund, and such financial support must be within the currently adopted budget for such fund. No financial support shall be financed from the miscellaneous federal programs fund without the express approval of the superintendent of public instruction.

History: **En. 75-7307 by Sec. 362, Ch. 5, L. 1971; R.C.M. 1947, 75-7307.**

20-9-705. Joint interstate school agreements. (1) The trustees of any district adjacent to another state may enter into a contract with a school district in such adjoining state to provide for the joint erection, operation, and maintenance of school facilities for both districts upon such terms and conditions as may be mutually agreed to by such districts and as are in accord with this section. Any such contract proposed for adoption by the trustees shall be in the form and contain only terms that may be prescribed by the superintendent of public instruction, and any such contract shall be approved by the superintendent of public instruction before it is considered by the electors of the district.

(2) Before any contract negotiated under the provisions of this section shall be executed, the trustees shall call an election under the provisions of 20-20-201 and submit to the qualified electors of the district the proposition that such contract be approved and that the trustees execute such contract. No agreement shall be valid until it has been approved at an election. The electors at the election shall be qualified to vote under the provisions of 20-20-301, and the election shall be conducted under the school election provisions of this title. The ballot for the election shall be substantially in the following form:

PROPOSITION

SCHOOL DISTRICT NO. ...., ... COUNTY

Shall the trustees of this district be authorized and directed to execute the proposed contract with school district number .... of .... County, state of ...., for the purpose of (insert the purpose of such contract)?

☐ FOR execution of contract.
☐ AGAINST execution of contract.

(3) The trustees of any district executing a contract under this section shall have the power and authority to levy taxes and issue bonds for the purpose of erecting and maintaining the facilities authorized by this section. Furthermore, the facilities erected or maintained under this section may be located in either Montana or the adjoining state.

History: En. 75-7308 by Sec. 363, Ch. 5, L. 1971; R.C.M. 1947, 75-7308.

Cross-References

Mail ballot elections prohibited, 13-19-104.

School elections, Title 20, ch. 20.

Part 8

Emergency School Closure

Part Cross-References

Disaster and emergency services, Title 10, ch. 3.

School terms and holidays — released time, Title 20, ch. 1, part 3.

Energy supply emergencies, Title 90, ch. 4, part 3.

20-9-801. Purpose. This part governs a school district's entitlement to state equalization apportionment funds for any school year during which the school district is unable to conduct the minimum number of school days required by law by reason of one or more unforeseen emergencies. The provisions of this part must be narrowly interpreted.

History: En. Sec. 1, Ch. 288, L. 1979.

20-9-802. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Unforeseen emergency" means a fire, flood, explosion, storm, earthquake, riot, insurrection, community disaster, or act of God or any combination of the foregoing that acts as a principal cause for a school district's inability to conduct one or more scheduled school days.

(2) "Declaration of emergency" means a declaration of a state of emergency by the governor as authorized by 10-3-302.

(3) "School day" means the school day defined in 20-1-302.

(4) "Reasonable effort" means the rescheduling or extension of the school district's instructional calendar in an effort to attain the minimum number of school days required by law by:

(a) extending the school year 1 week beyond the last scheduled day; or

(b) the use of scheduled vacation days.

History: En. Sec. 2, Ch. 288, L. 1979; amd. Sec. 1, Ch. 85, L. 1981.

20-9-803. Unforeseen emergency minimum. In no case may a district be considered to have made a reasonable effort unless at least 3 school days that have been lost by reason of one or more unforeseen emergencies have in fact been made up.

History: En. Sec. 3, Ch. 288, L. 1979.

20-9-804. Determination of eligibility. If the county superintendent or, in a county with no county superintendent, the superintendent of public instruction determines that a reasonable effort has been made to make up all school days lost by reason of one or more unforeseen emergencies but fewer than the minimum number of school days required by law have been conducted, the school district will nevertheless be credited with full annual equalization apportionment according to the rate established in 20-9-805.

History: En. Sec. 4, Ch. 288, L. 1979.

Cross-References

Elementary district abandonment, 20-6-209.

20-9-805. Rate of reduction in annual apportionment entitlement. (1) For each school day short of the minimum number of school days required by law that a school district fails to conduct by reason of one or more unforeseen emergencies as defined in 20-9-802, the superintendent of public instruction shall reduce the equalization apportionment and entitlement of the district for that school year by 1/180th.

(2) Kindergarten and grade 1 through 12 programs shall be considered separately for the purpose of computing compliance with minimum school day requirements and any loss of apportionment.

History: En. Sec. 5, Ch. 288, L. 1979; amd. Sec. 7, Ch. 299, L. 1985.

20-9-806. School closure by declaration of emergency. If a school is closed by reason of a declaration of emergency by the governor, the pupil-instruction days lost during the closure need not be rescheduled to meet the minimum requirement for pupil-instruction days that a school district must conduct during the school year in order to be entitled to full annual equalization apportionment.

History: En. Sec. 2, Ch. 85, L. 1981.

Cross-References

Pupil-instruction-related days, 20-1-304.

CHAPTER 10

TRANSPORTATION AND FOOD SERVICES

Part 1 — School Buses and Transportation

20-10-101. Definitions.
20-10-102. School bus requirements.
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20-10-105. Determination of residence.
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20-10-121. Duty of trustees to provide transportation — types of transportation — bus riding time limitation.
20-10-122. Discretionary provision of transportation and payment for this transportation.
20-10-123. Provision of transportation for nonpublic school children.
20-10-124. Private party contract for transportation — individual transportation contract.
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Part 2 — Food Services

20-10-201. Acceptance, expenditure, and administration of federal school food services moneys.
20-10-202. Records, reports, reviews, and audits.
20-10-203. School food commodities.
20-10-204. Duties of trustees.
20-10-205. Allocation of federal funds to school food services fund for federally connected, indigent pupils.
20-10-206. Pupils in state institutional schools included.
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Part 1

School Buses and Transportation

Part Cross-References

Rules for determining residence, 1-1-215.
School property, Title 20, ch. 6, part 6.
Nonoperating fund to include funds for transportation of resident pupils, 20-9-505.
Meeting or passing school bus, 61-8-351.

20-10-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Transportation" shall mean:

(a) a district's conveyance of a pupil by a school bus between his legal residence and the school designated by the trustees for his attendance;

(b) a district's conveyance of a pupil by a school bus between his regular school of attendance and the vocational-technical secondary schools designated by the trustees for his attendance if the secondary school is located in some other school district; or

(c) "individual transportation" whereby a district is relieved of actually conveying a pupil. Such individual transportation may include paying the parent or guardian for conveying the pupil, reimbursing the parent or guardian for the pupil's board and room, or providing supervised correspondence study or supervised home study.

(2) An "eligible transportee" shall mean a public school pupil who:

(a) is not less than 5 years of age nor has attained his 21st birthday;

(b) is a resident of the state of Montana;

(c) regardless of district and county boundaries, resides at least 3 miles, over the shortest practical route, from the nearest operating public elementary school or public high school, whichever the case may be; and

(d) is deemed by law to reside with his parent or guardian who maintains legal residence within the boundaries of the district furnishing the transportation regardless of where the eligible transportee actually lives when attending school.

(3) (a) A "school bus" means, except as provided in subsection (3)(b), any motor vehicle that:

(i) complies with the bus standards established by the board of public education as verified by the Montana department of justice's semiannual inspection of school buses and the superintendent of public instruction; and

(ii) is owned by a district or other public agency and operated for the transportation of pupils to or from school or owned by a carrier under contract with a district or public agency to provide transportation of pupils to or from school.

(b) A school bus does not include a vehicle that is:

(i) privately owned and not operated for compensation under this title;

(ii) privately owned and operated for reimbursement under 20-10-142;

(iii) either district-owned or privately owned, designed to carry not more than nine passengers, and used to transport pupils to or from activity events or to transport pupils to their homes in case of illness or other emergency situations; or

(iv) an over-the-road passenger coach used only to transport pupils to activity events.

History: (1), (2)En. Sec. 278, Ch. 5, L. 1971; amd. Sec. 1, Ch. 61, L. 1974; amd. Sec. 3, Ch. 371, L. 1975; Sec. 75-7001, R.C.M. 1947; (3)En. Sec. 279, Ch. 5, L. 1971; amd. Sec. 2, Ch. 141, L. 1973; Sec. 75-7002, R.C.M. 1947; R.C.M. 1947, 75-7001, 75-7002(part); amd. Sec. 1, Ch. 525, L. 1983.

Cross-References

Rules for determining residence, 1-1-215.

20-10-102. School bus requirements. (1) A school bus may be operated by the district or other public agency for the conveyance of pupils or may be privately operated by a carrier to provide such conveyance of pupils under contract with a district or other public agency.

(2) Every school bus shall bear on the front and rear of the bus a plainly visible sign containing the words "school bus" in letters at least 8 inches in height.

(3) When a school bus is operated on a highway for purposes other than transporting pupils to and from school or for school functions, all markings identifying it as a school bus shall be concealed.

History: En. 75-7002 by Sec. 279, Ch. 5, L. 1971; amd. Sec. 2, Ch. 141, L. 1973; R.C.M. 1947, 75-7002(part).

Cross-References

Power of Board of Public Education to adopt design, construction, and operation standards, 20-2-121.

Lettering requirement under highway code, 61-8-351.

Lighting equipment, 61-8-351, 61-8-352, 61-9-226, 61-9-402.

When studded tires permitted, 61-9-406.

Safety glazing material required, 61-9-408.

Semiannual inspection of school buses, 61-9-502.

Tires for school buses generally, 61-9-406.

Fees based on weight, school buses exempt except for charter service, 61-10-207.

20-10-103. School bus driver qualifications. Any driver of a school bus shall be qualified to drive such school bus by compliance with the following requirements:

(1) he is not less than 18 years of age;

(2) he is of good moral character;

(3) he is the holder of a driver's license with a commercial vehicle operator's endorsement;

(4) he has filed with the district a satisfactory medical examination report, on a blank provided by the superintendent of public instruction, signed by any physician licensed in the United States or, if acceptable to an insurance carrier, any licensed physician;

(5) he has completed a standard first aid course and holds a valid standard first aid certificate from an authorized instructor. The issuance of such certificate shall be governed by rules established by the superintendent of public instruction, provided that such rules may suspend this requirement for a reasonable period of time where there has been an inadequate opportunity for securing the first aid course and certificate.

(6) he has complied with any other qualifications established by the board of public education; and

(7) he has filed with the county superintendent a certificate from the trustees of the district for which the school bus is to be driven certifying compliance with the several driver qualifications enumerated in this section.

History: En. 75-7003 by Sec. 280, Ch. 5, L. 1971; amd. Sec. 1, Ch. 50, L. 1977; amd. Sec. 1, Ch. 151, L. 1977; R.C.M. 1947, 75-7003; amd. Sec. 37, Ch. 443, L. 1987.

Compiler's Comments

1987 Amendment: In (3) substituted "driver's license with a commercial vehicle operator's endorsement" for "chauffeur's license". Amendment effective January 1, 1988.

Cross-References

Power of trustees to employ and dismiss bus drivers, 20-3-324.

Chauffeur's license, special restrictions, 61-5-112.

20-10-104. Penalty for violating law or rules. (1) Every district, its trustees and employees, and every person under a transportation contract with a district shall be subject to the policies prescribed by the board of public education and the rules prescribed by the superintendent of public instruction. When a district knowingly violates a transportation law or board of public education transportation policy, such district shall forfeit any reimbursement otherwise payable under 20-10-145 and 20-10-146 for bus miles actually traveled during that fiscal year in violation of such law or policies. The county superintendent shall suspend all such reimbursements payable to the district until the district corrects the violation. When the district corrects the violation, the county superintendent shall resume paying reimbursements to the district, but the amount forfeited may not be paid to the district.

(2) When a person operating a bus under contract with a district knowingly fails to comply with the transportation law or the board of public education transportation policies, the district may not pay him for any bus miles traveled during the contract year in violation of such law or policies. Upon discovering such a violation, the trustees of the district shall give written notice to the person that unless the violation is corrected within 10 days of the giving of notice, the contract will be canceled. The trustees of a district shall order the operation of a bus operated under contract suspended when the bus is being operated in violation of transportation law or policies and the trustees find that such violation jeopardizes the safety of pupils.

History: En. 75-7006 by Sec. 283, Ch. 5, L. 1971; amd. Sec. 1, Ch. 78, L. 1974; R.C.M. 1947, 75-7006.

Cross-References

Penalty for violation of school laws, 20-1-207.

"Knowingly" defined, 45-2-101.

20-10-105. Determination of residence. When the residence of an eligible transportee is a matter of controversy and is an issue before a board of trustees, a county transportation committee, or the superintendent of public instruction, the residence shall be established on the basis of the general state residence law as provided in 1-1-215. Whenever any district or county is determined to be responsible for paying tuition for any pupil in accordance with 20-5-301, 20-5-302, or 20-5-311, the residence of the pupil for tuition purposes is the residence of the pupil for transportation purposes.

History: En. 75-7016 by Sec. 293, Ch. 5, L. 1971; amd. Sec. 20, Ch. 266, L. 1977; R.C.M. 1947, 75-7016.

20-10-106. Determination of mileage distances. When the mileage distance that transportation services are to be provided is a matter of controversy and is an issue before a board of trustees, a county transportation committee, or the superintendent of public instruction, the mileage shall be established on the following basis:

(1) The distance in mileage shall be measured by a vehicle equipped with an accurate odometer.

(2) A representative of the applicable district and a parent or guardian of the child to be transported shall be present when the distance is measured.

(3) The measurement shall begin 6 yards from the family home and end 6 yards from the entrance of the school grounds closest to the route.

(4) The route traversed for the measurement shall be the route designated by the trustees, except that the route shall be reasonably passable during the entire school fiscal year by the vehicle that provides the child's transportation. In determining reasonable passage, a route may not be disqualified because it is impassable during temporary, extreme weather conditions such as rains, snow, or floods.

History: En. 75-7017 by Sec. 294, Ch. 5, L. 1971; amd. Sec. 21, Ch. 266, L. 1977; R.C.M. 1947, 75-7017.

20-10-107. Power of trustees. The trustees of any district shall have the power to:

(1) purchase or rent a school bus;

(2) purchase or rent a two-way radio for a school bus when the trustees authorize a two-way radio as standard equipment in a school bus because

such bus is operated where weather and road conditions may constitute a hazard to the safety of the school pupil passengers;

(3) provide for the operation, maintenance, and insurance of a school bus or a two-way radio owned or rented by the district; or

(4) contract with a private party for the transportation of eligible transportees, and such contract shall not exceed the term of 5 years.

History: En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part).

20-10-108. Two-way radio operation. When the trustees authorize a two-way radio as standard equipment on a school bus, the two-way radio may be operated on the same frequency as that used by the Montana highway patrol and the sheriff of the county when their permission and the permission of the federal communications commission is secured. If permission is not secured from these agencies, the frequency assigned by the federal communications commission shall be used for the operation of the two-way radio.

History: En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part).

20-10-109. Liability insurance for school bus. Whenever a bus is owned and operated by a district or the bus is operated by a private party under a contract but no condition of such contract requires the private party to carry liability insurance, the trustees shall carry automobile bodily injury and liability insurance in an amount not less than $10,000 per person and $100,000 for each accident for each bus operated by or under contract with the district.

History: En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part).

20-10-110. School bus purchase — contract — bids. When a district purchases a school bus, the trustees may purchase such school bus under an installment contract which will be completely executed within 3 years from the date of the purchase. The trustees also may purchase a school bus without advertising for bids under the provisions of 20-9-204.

History: En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part).

20-10-111. Duties of board of public education. (1) The board of public education, by and with the advice of the Montana department of justice and the superintendent of public instruction, shall adopt and enforce policies, not inconsistent with the motor vehicle laws, to provide uniform standards and regulations for the design, construction, and operation of school buses in the state of Montana. Such policies shall:

(a) prescribe minimum standards for the design and construction of school buses not inconsistent with:

(i) minimum standards adopted by the national commission on safety education; or

(ii) minimum standards adopted by the national highway safety bureau;

(b) prescribe standards and specifications for the lighting equipment and special warning devices to be carried by school buses in conformity with:

(i) current specifications approved by the society of automobile engineers;

(ii) motor vehicle laws; and

(iii) the requirement that all school buses shall have an alternately flashing prewarning lighting system of four amber signal lamps to be used while preparing to stop and an alternately flashing warning lighting system of four red signal lamps to be used while stopped in accordance with 61-9-402;

(c) establish any other driver qualifications that may be deemed necessary in addition to the qualifications required in 20-10-103;

(d) prescribe criteria for the establishment of transportation service areas for school bus purposes by the county transportation committee which shall allow for the establishment of such areas without regard to the district boundary lines within the county;

(e) prescribe any other criteria for the determination of the residence of a pupil that may be deemed necessary in addition to the criteria established in 20-10-105;

(f) prescribe any other policies for the operation of school buses which are not inconsistent with:

(i) motor vehicle laws;

(ii) minimum standards adopted for school bus operation by the national commission on safety education;

(iii) highway safety standards; and

(iv) the transportation provisions of this title;

(g) prescribe standards for the measurement of the child seating capacity of school buses, to be known as the rated capacity.

(2) The board of public education may grant permission to the trustees of any district to use for transportation a four-wheel drive vehicle capable of transporting eight passengers or less that meets the minimum standards for these vehicles as prescribed by the board of public education if this type of vehicle will not be used to transport more than eight pupils per trip.

(3) Whenever the board of public education grants the trustees of a district permission to use a four-wheel drive vehicle under the provisions of subsection (2), the reimbursement to the district shall be based on the on-schedule rate of 20 cents per mile.

(4) The board of public education shall prescribe any other policy necessary for the proper administration and operation of individual transportation programs that are not inconsistent with the transportation provisions of this title.

History: En. 75-7004 by Sec. 281, Ch. 5, L. 1971; amd. Sec. 1, Ch. 416, L. 1973; R.C.M. 1947, 75-7004; amd. Sec. 1, Ch. 455, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Lighting equipment, 61-8-351, 61-8-352, 61-9-226, 61-9-402.

20-10-112. Duties of the superintendent of public instruction. In order to have a uniform and equal provision of transportation by all districts in the state of Montana, the superintendent of public instruction shall:

(1) prescribe rules and forms for the implementation and administration of the transportation policies adopted by the board of public education;

(2) prescribe rules for the approval of school bus routing by the county transportation committee;

(3) prescribe the format of the contract for individual transportation and supply each county superintendent with a sufficient number of such contracts;

(4) prescribe rules for the approval of individual transportation contracts, including the increases of the schedule rates due to isolation under the policy of the board of public education, and provide a degree-of-isolation chart to school district trustees to serve as a guide;

(5) approve, disapprove, or adjust all school bus routing submitted by the county superintendent;

(6) approve, disapprove, or adjust all individual transportation contracts submitted by the county superintendent;

(7) prescribe rules for the consideration of controversies appealed to him and rule on such controversies; and

(8) disburse the state transportation reimbursement in accordance with the provisions of law and the transportation policies of the board of public education.

History: En. 75-7005 by Sec. 282, Ch. 5, L. 1971; amd. Sec. 2, Ch. 416, L. 1973; R.C.M. 1947, 75-7005.

20-10-113 through 20-10-120 reserved.

20-10-121. Duty of trustees to provide transportation — types of transportation — bus riding time limitation. (1) The trustees of any district may furnish transportation to an eligible transportee who attends a school of the district or has been granted permission to attend a school outside of the district. Whenever the trustees of a district provide transportation for any eligible transportee, the trustees must provide all eligible transportees of the district with transportation. The trustees shall furnish transportation when directed to do so by the county transportation committee and such direction is upheld by the superintendent of public instruction.

(2) The tendering of a contract to the parent or guardian whereby the district would pay the parent or guardian for individually transporting the pupil or pupils shall fulfill the district's obligation to furnish transportation for an eligible transportee. The parent or guardian of an eligible transportee may, at his discretion, provide transportation or arrange for transportation for his child at his own expense to any district willing to accept his child.

(3) The type of transportation provided by a district may be:

(a) by a school bus; or

(b) by such individual transportation as:

(i) paying the parent or guardian for individually transporting the pupil;

(ii) paying board and room reimbursements;

(iii) providing supervised correspondence study; or

(iv) providing supervised home study.

(4) When the parent or guardian of an elementary pupil consents to a trip of over 1 hour, the trustees may require such eligible transportee to ride a school bus for more than 1 hour per trip.

History: En. 75-7008 by Sec. 285, Ch. 5, L. 1971; amd. Sec. 1, Ch. 245, L. 1973; R.C.M. 1947, 75-7008.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Supervised correspondence study, 20-7-116.

Special education child eligibility for transportation, 20-7-441.

20-10-122. Discretionary provision of transportation and payment for this transportation. (1) The trustees of any district also may provide school bus transportation to any pupil of a public school who is not an eligible transportee of the district:

(a) on a school bus conveying eligible transportees when the ineligible transportee will not displace an eligible transportee from such school bus because of the lack of seating capacity;

(b) on a school bus operated by the district for the sole purpose of providing transportation for ineligible transportees. Such school bus shall service those children living the greatest distance from the school to be attended.

(c) on a school bus operated for the purpose of relieving congestion in a school building or to avoid the necessity of erecting a new building or for any other reasons of economy or convenience.

(2) When the trustees of a district provide school bus transportation to an ineligible transportee under the conditions of subsections (1)(a) or (1)(b) above, the district may charge each ineligible transportee his proportionate share, as determined by the trustees, of the cost of operating such school bus. Money realized from such payments shall be deposited to the credit of the transportation fund.

History: En. 75-7009 by Sec. 286, Ch. 5, L. 1971; R.C.M. 1947, 75-7009.

Cross-References

Transportation fund as budgeted fund, 20-9-201.

20-10-123. Provision of transportation for nonpublic school children. Any child attending a nonpublic school may ride a school bus when a permit to ride such school bus is secured from the operating district by the parent or guardian of such nonpublic school child and when there is seating capacity available on such school bus. When a nonpublic school child rides a school bus, the operating district may charge such child his proportionate share, as determined by the trustees, of the cost of operating such school bus. Money realized from such payments shall be deposited to the credit of the transportation fund.

History: En. 75-7010 by Sec. 287, Ch. 5, L. 1971; R.C.M. 1947, 75-7010; amd. Sec. 1, Ch. 320, L. 1987.

Compiler's Comments

1987 Amendment: In second sentence substituted "may" for "shall", making transportation charge discretionary.

Cross-References

Transportation fund as budgeted fund, 20-9-201.

20-10-124. Private party contract for transportation — individual transportation contract. (1) When the trustees contract with any private party to provide transportation to eligible transportees, the private party shall comply in every respect with the regulations of the board of public education for the standards of equipment, operation and safety of the school bus, and qualifications of the driver. The trustees may, in contracting with private parties, require added safeguards by supplementing the board of public education policies in the contract with additional requirements for bus specifications, age of drivers, liability insurance, operating speed, or any other contractual condition deemed necessary by the trustees.

(2) Any school bus transportation by a private party or individual transportation that is furnished by a district shall be under contract, and no district, county, or state money shall be paid for such transportation services to any person or firm who does not hold a legal contract with the district. Transportation contracts for the ensuing year shall be completed by the

fourth Monday of June, except when an eligible transportee establishes residence in the district after the fourth Monday of June and a contingency amount is included in the regular transportation budget or an emergency transportation budget is adopted.

(3) Transportation contracts between a district and a private party for the provision of school bus transportation shall be subject to the following requirements:

(a) the contract shall be completed in quadruplicate and, upon completion, one copy shall be for the county superintendent, one copy for the private party, one copy for the superintendent of public instruction, and one copy shall be retained by the district;

(b) the contract terms shall require conformance to the transportation law, policies of the board of public education, and rules of the superintendent of public instruction; and

(c) the contract shall be signed by the chairman of the trustees and the private party.

(4) A transportation contract between a parent or guardian of an eligible transportee and a district for the provision of individual transportation shall be subject to the following requirements:

(a) it shall be completed in quadruplicate and, upon approval, one copy shall be for the parent or guardian, one copy for the district, one copy for the county superintendent, and one copy for the superintendent of public instruction;

(b) it shall be completed on forms promulgated by the superintendent of public instruction;

(c) the parent or guardian shall sign an affidavit attesting to the place of residence of his child or children; and

(d) it shall be signed by the chairman of the trustees and the parent or guardian of the eligible transportees.

History: (1)En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; Sec. 75-7011, R.C.M. 1947; (2) thru (4)En. 75-7012 by Sec. 289, Ch. 5, L. 1971; Sec. 75-7012, R.C.M. 1947; R.C.M. 1947, 75-7011(part), 75-7012.

Cross-References

Conflicts of interest, letting contracts, calling for bids, 20-9-204.

Trustees to execute all contracts, 20-9-213.

20-10-125. Bid letting for contract bus — payments under transportation contract. (1) Before any contract with a private party for the provision of school bus transportation is awarded, the trustees shall:

(a) secure bids by publishing during a period of 21 days at least three calls for bids in a newspaper of the county that will give notice to the largest number of people of the district or in the official newspaper of the county; the trustees shall let the contract to the lowest responsible bidder, and the trustees shall have the right to reject any and all bids; or

(b) negotiate a new contract with the current school bus contractor, provided the negotiated contract costs do not exceed by more than 12% per year the basic costs of the previous year's contract. Such a negotiated contract can be entered into only at a public meeting of the trustees at which meeting the patrons of the district may appear and be heard. Notice of the meeting must have been published in a newspaper of wide circulation within the district at least 1 week prior to the meeting.

(2) The provisions of this section for awarding a contract for school bus transportation shall be subject to the provisions of 20-9-204.

(3) The trustees shall not expend any moneys of the district for school bus transportation by a private party or for individual transportation unless:

(a) a contract for such transportation services has been completed; and

(b) such contracted services for school bus transportation by a private party have been actually furnished except that the failure to perform may be excused by the trustees for reasons not under the control of the contractor; or

(c) such contracted services for individual transportation have been actually furnished as confirmed by the actual attendance of school by the eligible transportees and recorded on the school attendance records or, in the case of a supervised correspondence course or supervised home study, as confirmed by the trustees; except that the contracted services furnished one way on any school day shall be reimbursed at one-half the daily contract amount.

History: En. 75-7013 by Sec. 290, Ch. 5, L. 1971; amd. Sec. 1, Ch. 362, L. 1973; R.C.M. 1947, 75-7013; amd. Sec. 1, Ch. 349, L. 1979; amd. Sec. 1, Ch. 97, L. 1981.

Cross-References

Open meetings, Title 2, ch. 3, part 2.

Conflict of interest, 20-1-205.

Meetings and quorum, 20-3-322.

Supervised correspondence or home study as exception to compulsory enrollment, 20-5-102.

Supervised correspondence study, 20-7-116.

Trustees to execute all contracts, 20-9-213.

20-10-126 through 20-10-130 reserved.

20-10-131. County transportation committee membership. (1) To coordinate the orderly provision of a uniform transportation program within a county under the transportation law, board of public education transportation policies, and the transportation rules of the superintendent of public instruction, there shall be a county transportation committee created in each county of the state of Montana. The membership of the county transportation committee shall be:

(a) the county superintendent;

(b) the chairman of the board of county commissioners or a member of such board designated by the chairman;

(c) a trustee or district employee designated by the trustees of each high school district of the county;

(d) one representative from each high school district of the county who is a trustee of an elementary district encompassed within the high school district and who has been selected at a meeting of the trustees of such elementary districts; and

(e) a representative of a district of another county when the transportation services of such a district are affected by the actions of the transportation committee, but such a representative shall have a voice only in matters affecting transportation within such district or by such district.

(2) The county transportation committee shall have at least five members, and if this minimum membership cannot be realized in the manner prescribed in subsections (1)(a) through (1)(d) above, the county superintendent shall appoint a sufficient number of members to satisfy the minimum membership requirement.

(3) The county superintendent shall be the chairman of the county transportation committee, and a quorum shall consist of a majority of the membership. The county transportation committee shall meet on the call of the chairman or any three members of such committee.

History: **En. 75-7014 by Sec. 291, Ch. 5, L. 1971; R.C.M. 1947, 75-7014.**

20-10-132. Duties of the county transportation committee. (1) It shall be the duty of the county transportation committee to:

(a) establish the transportation service areas within the county, without regard to district boundary lines, which will define the geographic area of responsibility for school bus transportation for each district that operates a school bus transportation program;

(b) approve, disapprove, or adjust the school bus routing submitted by the trustees of each district in conformity with the transportation service areas established in subsection (1)(a);

(c) approve, disapprove, or adjust applications, approved by the trustees, for increased reimbursements for individual transportation due to isolated conditions of the eligible transportee's residence; and

(d) conduct hearings to establish the facts of transportation controversies which have been appealed from the decision of the trustees and act on such appeals on the basis of the facts established at such hearing.

(2) After a fact-finding hearing and decision on a transportation controversy, the trustees or a patron of the district may appeal such decision to the superintendent of public instruction who shall render a decision on the basis of the facts established at the county transportation committee hearing.

(3) The trustees of any district which objects to a particular school bus route or transportation service area to which it has been assigned may request a transfer to another school bus route or transportation service area. The county transportation committee may transfer the territory of such district to an adjacent district's transportation service area or approved school bus route with the consent of such adjacent district. When the qualified electors of the district object to the decision of the county transportation committee and the adjacent district is willing to provide school bus service, 20% of the qualified electors, as prescribed in 20-20-301, may petition the trustees to conduct an election on the proposition that the territory of such district be transferred for school bus transportation purposes to such consenting, adjacent district. When a satisfactory petition is presented to the trustees, the trustees shall call an election in accordance with 20-20-201 for the next ensuing regular school election day. Such election shall be conducted in accordance with the school election laws. If a majority of those voting at such election approve the transfer, it shall become effective on July 1 of the ensuing school fiscal year.

(4) Unless a transfer of a district from one transportation service area or approved school bus route to another such area or route is approved by the county transportation committee and the superintendent of public instruction, the state transportation reimbursement shall be limited to the reimbursement amount for school bus transportation to the nearest operating public elementary school or public high school, whichever is appropriate for the affected pupils.

History: **En. 75-7015 by Sec. 292, Ch. 5, L. 1971; R.C.M. 1947, 75-7015.**

Cross-References
Mail ballot elections prohibited, 13-19-104.
School fiscal year, 20-1-301.
School elections, Title 20, ch. 20.

20-10-133 through 20-10-140 reserved.

20-10-141. Schedule of maximum reimbursement by mileage rates. (1) The following mileage rates for school transportation constitute the maximum reimbursement to districts for school transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates shall not limit the amount which a district may budget in its transportation fund budget in order to provide for the estimated and necessary cost of school transportation during the ensuing school fiscal year. All bus miles traveled on routes approved by the county transportation committee are reimbursable. Nonbus mileage is reimbursable for a vehicle driven by a bus driver to and from an overnight location of a school bus when the location is more than 10 miles from the school. A district may approve additional bus or nonbus miles within its own district or approved service area but may not claim reimbursement for such mileage. Any vehicle, the operation of which is reimbursed for bus mileage under the rate provisions of this schedule, shall be a school bus, as defined by this title, driven by a qualified driver on a bus route approved by the county transportation committee and the superintendent of public instruction.

(2) The rate per bus mile traveled shall be determined in accordance with the following schedule when the number of eligible transportees that board a school bus on an approved route is not less than one-half of its rated capacity:

(a) 72 cents in fiscal 1984 and 80 cents in fiscal 1985 and each year thereafter per bus mile for a school bus with a rated capacity of not less than 12 but not more than 45 children; and

(b) when the rated capacity is more than 45 children, an additional 2 cents per bus mile for each additional child in the rated capacity in excess of 45 shall be added to a base rate of 72 cents in fiscal 1984 and 80 cents in fiscal 1985 and each year thereafter per bus mile.

(3) Reimbursement for nonbus mileage provided for in subsection (1) may not exceed 50% of the maximum reimbursement rate determined under subsection (2).

(4) When the number of eligible transportees boarding a school bus on an approved route is less than one-half of its rated capacity, the rate per bus mile traveled shall be computed as follows:

(a) determine the number of eligible transportees that board the school bus on the route;

(b) multiply the number determined in subsection (4)(a) by two and round off to the nearest whole number; and

(c) use the adjusted rated capacity determined in subsection (4)(b) as the rated capacity of the bus to determine the rate per bus mile traveled from the rate schedule in subsection (2).

(5) The rated capacity shall be the number of riding positions of a school bus as determined under the policy adopted by the board of public education.

History: En. 75-7018 by Sec. 295, Ch. 5, L. 1971; amd. Sec. 1, Ch. 469, L. 1975; amd. Sec. 22, Ch. 266, L. 1977; amd. Sec. 1, Ch. 529, L. 1977; R.C.M. 1947, 75-7018; amd. Sec. 1, Ch.

590, L. 1979; amd. Sec. 1, Ch. 454, L. 1981; amd. Sec. 1, Ch. 515, L. 1983; amd. Sec. 1, Ch. 559, L. 1983; amd. Sec. 1, Ch. 344, L. 1985.

Cross-References

School fiscal year, 20-1-301.

Emergency budget for transportation fund, 20-9-162, 20-9-165.

Transportation fund as budgeted fund, 20-9-201.

20-10-142. Schedule of maximum reimbursement for individual transportation. The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates also shall constitute the limitation of the budgeted amounts for individual transportation for the ensuing school fiscal year. The schedules provided in this section shall not be altered by any authority other than the legislature of the state of Montana. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall reimburse the parent or guardian on the basis of the following schedule:

(1) When a parent or guardian transports an eligible transportee or transportees from the residence of the parent or guardian to a school or to schools located within 3 miles of one another, the total reimbursement per day of attendance shall be determined by multiplying the distance in miles between the residence and the school, or the most distant school if more than one, by 2, subtracting 6 miles from the product so obtained, and multiplying the difference by 20 cents provided that:

(a) if two or more eligible transportees are transported by a parent or guardian to two or more schools located within 3 miles of one another and if such schools are operated by different school districts, the total amount of the reimbursement shall be divided equally between the districts;

(b) if two or more eligible transportees are transported by a parent or guardian to two or more schools located more than 3 miles from one another, the parent or guardian shall be separately reimbursed for transporting the eligible transportee or transportees to each school;

(c) if a parent transports two or more eligible transportees to a school and a bus stop which school and bus stop are located within 3 miles of one another, the total reimbursement shall be determined under the provisions of this subsection and shall be divided equally between the district operating the school and the district operating the bus;

(d) if a parent transporting two or more eligible transportees to a school or bus stop must, because of varying arrival and departure times, make more than one round-trip journey to the bus stop or school, the total reimbursement allowed by this section shall be limited to one round trip per day for each scheduled arrival or departure time;

(e) notwithstanding subsection (1)(a), (1)(b), (1)(c), or (1)(d), no reimbursement may be less than 25 cents a day.

(2) When the parent or guardian transports an eligible transportee or transportees from the residence to a bus stop of a bus route approved by the trustees for the transportation of the transportee or transportees, the total reimbursement per day of attendance shall be determined by multiplying the distance in miles between the residence and the bus stop by 2, subtracting 3

miles from the product so obtained, and multiplying the difference by 20 cents provided that:

(a) if the eligible transportees transported attend schools in different districts but ride on one bus, the districts shall divide the total reimbursement equally; and

(b) if the parent or guardian is required to transport the eligible transportees to more than one bus, the parent or guardian shall be separately reimbursed for transportation to each bus.

(3) Where, due to excessive distances, impassable roads, or other special circumstances of isolation the rates prescribed in subsection (1) or (2) would be an inadequate reimbursement for the transportation costs or would result in a physical hardship for the eligible transportee, his parent or guardian may request an increase in the reimbursement rate. Such a request for increased rates due to isolation shall be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year by indicating the special facts and circumstances which exist to justify the increase. Before any increased rate due to isolation can be paid to the requesting parent or guardian, such rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by the county transportation committee and the superintendent of public instruction, the trustees shall pay such increased rate due to isolation. The increased rate shall be 1 ½ times the rate prescribed in subsection (1) above.

(4) When the isolated conditions of the household where an eligible transportee resides require such eligible transportee to live away from the household in order to attend school, he shall be eligible for the room and board reimbursement. Approval to receive the room and board reimbursement shall be obtained in the same manner prescribed in subsection (3) above. The per diem rate for room and board shall be $5 for one eligible transportee and $3 for each additional eligible transportee of the same household.

(5) When the individual transportation provision is to be satisfied by supervised home study or supervised correspondence study, the reimbursement rate shall be the cost of such study, provided that the course of instruction is approved by the trustees and supervised by the district.

History: En. 75-7019 by Sec. 296, Ch. 5, L. 1971; amd. Sec. 1, Ch. 169, L. 1973; amd. Sec. 3, Ch. 416, L. 1973; amd. Sec. 1, Ch. 470, L. 1975; amd. Sec. 1, Ch. 534, L. 1977; R.C.M. 1947, 75-7019; amd. Sec. 2, Ch. 590, L. 1979; amd. Sec. 2, Ch. 454, L. 1981.

Cross-References

Supervised correspondence or home study as exception to compulsory enrollment, 20-5-102.

Supervised correspondence study, 20-7-116.

20-10-143. Budgeting for transportation and transmittal of transportation contracts. (1) The trustees of any district furnishing transportation to pupils who are residents of such district shall have the authority and it shall be their duty to provide a transportation fund budget that is adequate to finance such district's transportation contractual obligations and any other transportation expenditures necessary for the conduct of its transportation program. The transportation fund budget shall include:

(a) an adequate amount to finance the maintenance and operation of district owned and operated school buses;

(b) the annual contracted amount for the maintenance and operation of school buses by a private party;

(c) the annual contracted amount for individual transportation, including any increased amount due to isolation, which shall not exceed the schedule amounts prescribed in 20-10-142;

(d) any amount necessary for the purchase, rental, or insurance of school buses; and

(e) any other amount necessary to finance the administration, operation, or maintenance of the transportation program of the district, as determined by the trustees.

(2) The trustees may include a contingency amount in the transportation fund budget for the purpose of enabling the district to fulfill any obligation to provide transportation in accordance with the transportation law for any pupils not residing in the district at the time of the adoption of the preliminary budget and who subsequently became residents of such district during the school fiscal year or pupils who have become eligible transportees since the adoption of the preliminary budget because their legal residence has been changed. The budgeted contingency amount shall not exceed 10% of the transportation schedule amount as calculated under the provisions of 20-10-141 and 20-10-142 for all transportation services authorized by such schedule and provided by the district unless 10% of such transportation schedule amount shall be less than $100, in which case $100 shall be the maximum limitation for such budgeted contingency amount.

(3) As provided in 20-9-162, an emergency transportation fund budget may be adopted subject to the provisions of the emergency budgeting law.

(4) The transportation fund budgeted expenditures appropriated by the trustees shall be reported on the regular budget form prescribed by the superintendent of public instruction in accordance with 20-9-103, and the adoption of the transportation fund budget shall be completed in accordance with the school budgeting laws. When the adopted preliminary budget is sent to the county superintendent, the trustees shall also send copies of all completed transportation contracts for school bus transportation and individual transportation to the county superintendent. Such contracts shall substantiate all contracted transportation services incorporated in the preliminary budget, and after the county superintendent has utilized the contracts for such purpose but before the fourth Monday of July, he shall send all the transportation contracts received by him to the superintendent of public instruction. When the county superintendent determines a deviation between the preliminary transportation fund budget amount for contracted transportation services and the contracted amount for such services, he shall immediately call the deviation to the attention of the appropriate trustees and shall allow the trustees to change the preliminary budgeted amount to compensate for such deviation.

History: **En. 75-7020 by Sec. 297, Ch. 5, L. 1971; R.C.M. 1947, 75-7020.**

Cross-References

Bonus payments deposited to transportation fund, 20-6-406.

Transportation fund as budgeted fund, 20-9-201.

20-10-144. Computation of revenues and net tax levy requirements for the transportation fund budget. Before the fourth Monday of

July and in accordance with 20-9-123, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 shall be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by such district); plus

(b) the total of all individual transportation per diem reimbursement rates for such district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted on the preliminary budget for the contingency amount permitted in 20-10-143, except if such amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the preliminary budget shall be reduced to such limitation amount and used in this determination of the schedule amount.

(2) The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, shall be divided by 3 and the resulting one-third amount shall be used to determine the available state and county revenue to be budgeted on the following basis:

(a) the resulting one-third amount shall be the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 shall be two-thirds of the schedule amount attributed to the transportation of special education pupils;

(b) the resulting one-third amount, except as provided for joint elementary districts in subsection (2)(e), shall be the budgeted county transportation reimbursement for elementary districts and shall be financed by the basic county tax under the provisions of 20-9-334;

(c) the resulting one-third amount multiplied by 2 shall be the budgeted county transportation reimbursement amount for high school districts financed under the provisions of subsection (5) of this section, except as provided for joint high school districts in subsection (2)(e), and except that the county transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 shall be one-third of the schedule amount attributed to the transportation of special education pupils;

(d) when the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of such district revenue and cash reappropriated shall be used to reduce the county financing obligation in subsections (2)(b) or (2)(c) and, if such county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a); and

(e) the county revenue requirement for a joint district, after the application of any district moneys under subsection (2)(d) above, shall be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each such county.

(3) The total of the moneys available for the reduction of property tax on the district for the transportation fund shall be determined by totaling:

(a) anticipated federal moneys received under the provisions of Title I of Public Law 81-874 or other anticipated federal moneys received in lieu of such federal act; plus

(b) anticipated payments from other districts for providing school bus transportation services for such district; plus

(c) anticipated payments from a parent or guardian for providing school bus transportation services for his child; plus

(d) anticipated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4); plus

(e) anticipated revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537; plus

(f) net proceeds taxes for interim production and new production, as defined in 15-23-601; plus

(g) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year which may be used to finance the transportation fund; plus

(h) any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the transportation fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the transportation fund. Such cash reserve shall not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and shall be for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund shall be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount and, for an elementary district, adding such difference to the district obligation to finance one-third of the schedule amount as determined in subsection (2); and

(b) subtracting the amount of moneys available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a) above.

(5) The county levy requirement for the financing of the county transportation reimbursement to high school districts shall be computed by adding all such requirements for all the high school districts of the county, including the county's obligation for reimbursements in joint high school districts.

(6) The transportation fund levy requirements determined in subsection (4) for each district and in subsection (5) for the county shall be reported to the county commissioners on the second Monday of August by the county superintendent as the transportation fund levy requirements for the district

and for the county, and such levies shall be made by the county commissioners in accordance with 20-9-142.

History: En. 75-7021 by Sec. 298, Ch. 5, L. 1971; R.C.M. 1947, 75-7021; amd. Sec. 6, Ch. 699, L. 1983; amd. Sec. 17, Ch. 695, L. 1985; amd. Sec. 20, Ch. 611, L. 1987; amd. Sec. 24, Ch. 655, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 611 in (3)(e), after "anticipated", substituted "revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537" for "motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536".

Chapter 655 in (3)(f), before "new production", inserted "interim production and".

Cross-References

Property tax levies, Title 15, ch. 10.

Supervised correspondence study, 20-7-116.

Basic special levies, 20-9-331, 20-9-333.

20-10-145. State transportation reimbursement. (1) Any district providing school bus transportation or individual transportation in accordance with the transportation law, board of public education transportation policy, and superintendent of public instruction transportation rules shall receive a state reimbursement of its transportation expenditures under the transportation reimbursement rate provisions of 20-10-141 and 20-10-142. The state transportation reimbursement shall not exceed one-third of the reimbursement amounts established in such sections or one-third of the district's transportation fund budget, whichever is smaller, and shall be computed on the basis of the number of days the transportation services were actually rendered. In determining the amount of the state transportation reimbursement, no amount claimed by a district shall be considered for reimbursement unless such amount has been paid in the regular manner provided for the payment of other financial obligations of the district.

(2) Requests for the state transportation reimbursement shall be made by each district semiannually during the school fiscal year on the claim forms and procedure promulgated by the superintendent of public instruction. The claims for state transportation reimbursements shall be routed by the district to the county superintendent, who after reviewing such claims shall send them to the superintendent of public instruction. The superintendent of public instruction shall establish the validity and accuracy of the claims for the state transportation reimbursements by determining their compliance with the transportation law, board of public education transportation policy, and the transportation rules of the superintendent of public instruction. After making any necessary adjustments to such claims, he shall cause their payment by ordering a disbursement from the state moneys appropriated by the legislature of the state of Montana for the state transportation reimbursement. Such payment of all the district's claims within one county shall be made to the county treasurer of such county, and the county superintendent shall apportion such payment in accordance with the apportionment order supplied by the superintendent of public instruction.

History: En. 75-7022 by Sec. 299, Ch. 5, L. 1971; R.C.M. 1947, 75-7022.

Cross-References

School fiscal year, 20-1-301.

State transportation reimbursement for special education children, 20-7-442.

20-10-146. County transportation reimbursement. (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with the transportation law, board of public education transportation policy, and the transportation rules of the superintendent of public instruction shall be the same as the state transportation reimbursement payment except that:

(a) the high school apportionment of the county transportation reimbursement shall be twice the state transportation reimbursement payment;

(b) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(d), the annual apportionment shall be limited to such budget amount;

(c) when a district receives a state transportation reimbursement of two-thirds the schedule amount for the transportation of special education pupils, the apportionment of the high school county transportation reimbursement shall be adjusted to provide only a one-third high school county reimbursement of the transportation of special education pupils; and

(d) when the county transportation reimbursement for a school bus has been prorated between two or more counties because such school bus is conveying pupils of more than one district located in such counties, the apportionment of the county transportation reimbursement shall be adjusted to pay the amount computed under such proration.

(2) The county superintendent shall apportion the elementary county transportation reimbursement from the proceeds of the county basic levy and the high school county transportation reimbursement from the proceeds of the county tax for high school transportation. The county superintendent shall order the county treasurer to make such apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments.

History: **En. 75-7023 by Sec. 300, Ch. 5, L. 1971; R.C.M. 1947, 75-7023.**

Cross-References

State transportation reimbursement for special education children, 20-7-442.

20-10-147. Bus depreciation reserve. (1) The trustees of any district owning a bus or a two-way radio used for purposes of transportation, as defined in 20-10-101, or for purposes of conveying pupils to and from school functions or activities may establish a bus depreciation reserve fund to be used for the replacement of such bus or radio.

(2) Whenever a bus depreciation reserve fund is established, the trustees may include in the district's budget, in accordance with the school budgeting provisions of this title, an amount each year that does not exceed 20% of the original cost of a bus or a two-way radio for such purposes. The annual revenue requirement for each district's bus depreciation reserve fund, determined within the limitations of this section, shall be reported by the county superintendent to the county commissioners on the second Monday of August as the bus depreciation reserve fund levy requirement for that district and a levy shall be made by the county commissioners in accordance with 20-9-142.

(3) Any expenditure of bus depreciation reserve fund moneys shall be within the limitations of the district's final bus depreciation reserve fund budget and the school financial administration provisions of this title and may be made only for the purchase of buses or radios to replace the buses or radios for which the bus depreciation reserve fund was created.

(4) Whenever the trustees of a district maintaining a bus depreciation reserve fund consider it to be in the best interest of the district to transfer any portion or all of the bus depreciation reserve cash balance to any other fund maintained by the district, it shall submit such proposition to the electors of the district. The electors qualified to vote at the election shall qualify under 20-20-301, and the election shall be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer is approved and the trustees shall immediately order the county treasurer to make the approved transfer.

History: En. 75-7024 by Sec. 301, Ch. 5, L. 1971; amd. Sec. 1, Ch. 194, L. 1977; R.C.M. 1947, 75-7024.

Cross-References

Administration of finances, Title 20, ch. 9, part 2.

School elections, Title 20, ch. 20.

Part 2

Food Services

Part Cross-References

"School food services" defined, 20-1-101.

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31.

Flour and bread, Title 50, ch. 34.

Wild animal meat to be donated to school lunch program, 87-1-226.

20-10-201. Acceptance, expenditure, and administration of federal school food services moneys. (1) The superintendent of public instruction is authorized to accept and direct the disbursement of funds appropriated by act of congress and apportioned to the state for use in financing school food services. This authorization shall apply to federal funds available for school food services under the National School Lunch Act (Public Law 396, 79th Congress, chapter 281, 2nd session), Child Nutrition Act of 1966 (Public Law 642, 89th Congress), any amendments to these public laws, and any other public laws enacted to provide assistance for school food services.

(2) The superintendent of public instruction shall deposit all federal funds for school food services with the state treasurer who shall credit such funds to the agency fund. Any disbursement of the federal school food services funds shall be directed by the superintendent of public instruction.

(3) The superintendent of public instruction may:

(a) enter into agreements and cooperate with any federal agency, district, or other agency or person, prescribe such regulations, employ such personnel, and take such other action as he may deem necessary to:

(i) provide for the establishment, operation, and expansion of school food services; and

(ii) disburse federal and state funds according to the requirements of federal and state law;

(b) give technical advice and assistance to any district establishing or operating school food services and assist in the training of personnel for such services;

(c) accept any gift for use in providing school food services;

(d) conduct studies of methods of improving and expanding school food services and appraise the nutritive benefits of school food services.

(4) The superintendent of public instruction shall report annually to the board of public education on the financial, administrative, and operational phases of school food services.

History: **En. 75-8002 by Sec. 443, Ch. 5, L. 1971; R.C.M. 1947, 75-8002; amd. Sec. 17, Ch. 281, L. 1983.**

Cross-References

Miscellaneous programs fund, 20-9-507.

Acceptance and expenditure of federal money for state, 20-9-603.

20-10-202. Records, reports, reviews, and audits. (1) The superintendent of public instruction shall prescribe regulations for keeping the financial and commodity records and making reports on school food services operated by a district. The financial records shall always be available for inspection and audit by federal and state officials authorized by law or contract to perform audits and shall be preserved for such period of time, not to exceed 5 years, as the superintendent of public instruction may prescribe.

(2) The superintendent of public instruction shall conduct or cause to be conducted the audits, inspections, and administrative reviews of the financial records and the operation of school food services.

History: **En. 75-8003 by Sec. 444, Ch. 5, L. 1971; R.C.M. 1947, 75-8003.**

Cross-References

Duty of Legislative Auditor to audit transactions of state agencies, 5-13-304.

20-10-203. School food commodities. The superintendent of public instruction is authorized to accept food commodities from the federal government and to distribute the food commodities to any district or nonpublic school that contracts for such distribution. The superintendent of public instruction may use for the shipping, handling, and other related costs of distributing the food commodities any funds advanced by legislative appropriation for the commodity state special revenue account. Such distribution costs shall be reimbursed by the participating districts and nonpublic schools. Those reimbursements shall be returned to the fund from which payments for the distribution costs were made.

History: **En. 75-8004 by Sec. 445, Ch. 5, L. 1971; R.C.M. 1947, 75-8004; amd. Sec. 18, Ch. 281, L. 1983.**

Cross-References

Power of districts to accept gifts, 20-6-601.

Duty of trustees to execute all contracts, 20-9-213.

20-10-204. Duties of trustees. (1) The trustees of any district offering school food services may:

(a) enter into contracts with the superintendent of public instruction for the purpose of obtaining funds, supplies and equipment, food commodities, and facilities necessary for the establishment, operation, and maintenance of the school food services;

(b) sell food to the pupils and adults participating in the school food services in accordance with the policies of the superintendent of public instruction;

(c) accept any gift for use of the school food services;

(d) allocate federal funds received in lieu of property taxation to the school food services fund in accordance with the provisions of 20-10-205; and

(e) adopt such policies for the operation of school food services as are consistent with the regulations of the superintendent of public instruction and with the laws of Montana.

(2) When the trustees of any district offer school food services, they shall establish a school food services fund for the deposit of proceeds from the sale of food, gifts, and other moneys specified in this section and for the expenditure of such moneys in support of the school food services.

History: En. 75-8005 by Sec. 446, Ch. 5, L. 1971; R.C.M. 1947, 75-8005.

Cross-References

Powers and duties of trustees generally, 20-3-324.

Power of districts to accept gifts, 20-6-601.

Administration of finances, Title 20, ch. 9, part 2.

Conflicts of interest, letting contracts, and calling for bids, 20-9-204.

Duty of trustees to execute all contracts, 20-9-213.

20-10-205. Allocation of federal funds to school food services fund for federally connected, indigent pupils. The trustees of any school district receiving federal reimbursement in lieu of taxes may request the allocation of a portion of such federal funds to the school food services fund to provide free meals for federally connected, indigent pupils when the pupils are declared eligible. In granting the request, the county superintendent shall comply with the following procedures:

(1) The indigency must be certified by the county department of welfare, assisted by a committee of three composed of the county superintendent, a representative of the county health department, and an authorized representative of the district.

(2) A certified, detailed claim for the amount of the federal reimbursement in lieu of taxes that is to be allocated to the school food services fund shall be filed by the district with the county superintendent. The county superintendent shall confirm or adjust the amount of the claim by:

(a) determining that the pupils included on the claim have been declared indigent under subsection (1);

(b) determining the number of meals provided the indigent pupils by the school food services;

(c) determining the price per meal charged the nonindigent pupil; and

(d) multiplying the number of meals provided to indigent pupils by the price per meal.

(3) After the county superintendent's confirmation or adjustment of the claim, he shall notify the district and the county treasurer of the approved amounts for allocation to the school food services fund. The district shall deposit the approved amount in the school food services fund on receipt of the succeeding federal payment in lieu of taxes.

History: En. 75-8006 by Sec. 447, Ch. 5, L. 1971; R.C.M. 1947, 75-8006.

Cross-References

Allocation of federal funds in lieu of property taxes, 20-9-143.

20-10-206. Pupils in state institutional schools included. The provisions of 20-10-201 through 20-10-205 shall apply to pupils in state institutional schools meeting the requirements established by the superintendent of public instruction and the applicable federal laws and regulations.

History: En. Sec. 1, Ch. 92, L. 1973; R.C.M. 1947, 75-8007.

20-10-207. School food services fund. The trustees of any district offering school food services shall establish a school food services fund under the provisions of 20-10-204. Such fund shall be a nonbudgeted fund and shall be financially administered under the provisions of this title for a nonbudgeted fund.

History: En. 75-7211 by Sec. 350, Ch. 5, L. 1971; R.C.M. 1947, 75-7211.

Cross-References

"Nonbudgeted fund" defined, 20-9-201.

CHAPTERS 11 THROUGH 14

RESERVED

CHAPTER 15

COMMUNITY COLLEGE DISTRICTS

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Part 1

General Provisions

20-15-101. Definition. As used in this title, unless the context clearly indicates otherwise, the term "community college district" means a body corporate and a subdivision of the state of Montana organized under a single board of trustees for the purpose of providing community college instruction to high school graduates and other persons who have terminated their formal high school education. Community college districts shall be in addition to any other districts existing in any portion of the area encompassed by the community college district.

History: En. 75-8101 by Sec. 448, Ch. 5, L. 1971; R.C.M. 1947, 75-8101.

20-15-102. Community college districts — name and corporate powers. A community college district shall be known as "Community College District of ...., Montana". In this name, the community college district may sue and be sued, levy and collect taxes within the limitations of the laws of Montana, and possess the same corporate powers as districts in this state, except as otherwise provided by law.

History: En. 75-8102 by Sec. 449, Ch. 5, L. 1971; R.C.M. 1947, 75-8102.

Cross-References

Claims and actions against political subdivisions, Title 2, ch. 9, part 3.

20-15-103. Supervision and coordination by board of regents. Community college districts shall be under the supervision and coordination of the regents. The regents shall:

(1) supervise community college districts in accordance with the provisions of this section and 20-15-105;

(2) appoint a coordinator of community college districts and prescribe the duties of the coordinator;

(3) formulate and put into effect general policies for the supervision and coordination of community college districts;

(4) after consultation with the community college trustees, develop and implement policies that distinguish the regents' authority to supervise and coordinate and the trustees' authority to administer and control community colleges; and

(5) call an election, determine the results of the election, and order and implement the organization of a community college district in accordance with this chapter.

History: (1), (5)En. 75-5607.1 by Sec. 2, Ch. 266, L. 1977; Sec. 75-5607.1, R.C.M. 1947; (2)En. Sec. 450, Ch. 5, L. 1971; amd. Sec. 1, Ch. 406, L. 1971; Sec. 75-8103, R.C.M. 1947; R.C.M. 1947, 75-5607.1, 75-8103; (3), (4)En. Sec. 25, Ch. 392, L. 1979.

Cross-References

Board of Regents established, Art. X, sec. 9, Mont. Const.; 2-15-1505.

Powers and duties of Board of Regents generally, 20-25-301.

20-15-104. Pecuniary interest and letting contracts. (1) It shall be unlawful for any community college district trustee to have any pecuniary interest, either directly or indirectly, in the erection of any community college building in his district or in furnishing or repairing the same or be in any manner connected with the furnishing of supplies for the maintenance of the college or to receive or accept any compensation or reward for services rendered as trustee, except as herein provided.

(2) The board of trustees shall let contracts for building, furnishing, repairing, or other work or supplies for the benefit of the district according to the following rules and procedures:

(a) The board of trustees need not meet requirements relating to advertising or bidding if a proposed contract for building, furnishing, repairing or other work or supplies is for less than $5,000.

(b) Whenever the proposed contract costs are less than $25,000 but more than $5,000, the board of trustees shall procure at least three informal bids, if reasonably available, from contractors licensed in Montana.

(c) Whenever the proposed contract costs are more than $25,000, the board of trustees shall solicit formal bids and advertise once each week for at least 2 weeks in a newspaper published in each county wherein the area of the district lies, calling for bids to perform such work or furnish such supplies. If advertising is required, the board shall award the contract to the lowest responsible bidder. However, the board of trustees has the right to reject any and all bids.

History: En. 75-8118 by Sec. 465, Ch. 5, L. 1971; R.C.M. 1947, 75-8118; amd. Sec. 26, Ch. 392, L. 1979.

Cross-References

Code of Ethics, Title 2, ch. 2, part 1.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

Penalty for violation of school laws, 20-1-207.

20-15-105. Courses of instruction — tuition and fees. (1) A community college district shall provide instruction in academic, occupational, and adult education, subject to the approval of the board of regents of higher education. The board of trustees of such district may, in their discretion and upon approval of the board of regents, prescribe:

(a) tuition rates for in-district students, out-of-district students who are residents of the state of Montana, and students who are not residents of the state of Montana;

(b) matriculation charges; and

(c) incidental fees, including building fees, for students in the community college.

(2) In addition thereto, such board of trustees may prescribe such other fees as it considers necessary to maintain courses, taking into consideration such other funds as may be available under law for the support of such courses.

History: En. 75-8119 by Sec. 466, Ch. 5, L. 1971; amd. Sec. 8, Ch. 406, L. 1971; amd. Sec. 4, Ch. 121, L. 1977; R.C.M. 1947, 75-8119.

Cross-References

Fee waiver — children of prisoners of war and persons killed in action, 10-2-312.

Vocational education, Title 20, ch. 7, part 3.

Adult education, Title 20, ch. 7, part 7.

Capacity of minors to borrow for education, 41-1-303.

20-15-106. Retirement systems for employees and teachers. (1) Teachers of a community college district are subject to and eligible for the benefits of the Montana teachers' retirement system.

(2) The employees of a community college district not eligible for teachers' retirement system benefits are subject to and eligible for the benefits of the Montana public employees' retirement system.

History: En. 75-8120 by Sec. 467, Ch. 5, L. 1971; R.C.M. 1947, 75-8120; amd. Sec. 27, Ch. 392, L. 1979.

Cross-References

Applicability of Public Employees' Retirement System, 19-3-403.

Teachers' retirement system, Title 19, ch. 4.

20-15-107. Lease or sale of district property. Whenever a district has property that is not required for the use of the district, such property may be leased or sold and conveyed to the community college district. Such lease or sale of property shall be consummated in accordance with the provisions of the law of Montana.

History: En. 75-8124 by Sec. 471, Ch. 5, L. 1971; R.C.M. 1947, 75-8124.

Cross-References

School property, Title 20, ch. 6, part 6.

Trustees to execute all contracts, 20-9-213.

Building fund to be credited when property sold, 20-9-508.

20-15-108. Baccalaureate degrees not to be granted. A community college district shall be prohibited from granting baccalaureate degrees.

History: En. 75-8126 by Sec. 1, Ch. 407, L. 1971; R.C.M. 1947, 75-8126.

Cross-References

Regulation of award of degrees — penalty, 20-25-107.

Authority of regents to grant diplomas and degrees, 20-25-301.

20-15-109. Acceptance of donations. The board of trustees of a community college district, on behalf of the district, is hereby authorized and empowered to accept gifts, legacies, and devises, subject to the conditions imposed by the deed of the dower or will of the testator or without any conditions imposed.

History: En. 75-8123 by Sec. 470, Ch. 5, L. 1971; R.C.M. 1947, 75-8123.

Part 2

Organization and Trustees

20-15-201. Requirements for organization of community college district. The registered electors in any area of the state of Montana may request an election for the organization of a community college district where the proposed community college district conforms to the following requirements:

(1) The proposed area coincides with the then-existing boundaries of contiguous elementary districts of one or more counties.

(2) The taxable value of the proposed area is at least $10 million.

(3) There are at least 700 pupils regularly enrolled in public and private high schools located in the proposed area.

History: En. 75-8104 by Sec. 451, Ch. 5, L. 1971; amd. Sec. 47, Ch. 566, L. 1977; R.C.M. 1947, 75-8104.

Cross-References

Elementary districts, Title 20, ch. 6, part 2.

20-15-202. Petition for organization of community college district. When the area of a proposed community college district satisfies the specified requirements, the registered electors of the area may petition the regents to call an election for the organization of a community college district. Such petition shall be signed by at least 20% of the registered electors within each county or a part of a county included in the area of the proposed community college district.

History: En. 75-8105 by Sec. 452, Ch. 5, L. 1971; amd. Sec. 2, Ch. 406, L. 1971; R.C.M. 1947, 75-8105.

Cross-References

Registration of electors, Title 13, ch. 2.

Qualification and registration of electors, Title 20, ch. 20, part 3.

20-15-203. Call of community college district organization election — proposition statement. (1) A petition for the organization of a community college district shall be presented to the regents. The regents shall examine the petition to determine if the petition satisfies the petitioning and community college district organizational requirements.

(2) If the regents determine that the petition satisfies such requirements, the regents shall order the elementary districts encompassed by the proposed community college district to conduct an election on the community college district organization proposition. Such election shall be held on the next succeeding regular school election day, except that an election required by a petition received by the regents less than 60 days before the regular school election day shall be held at the regular school election in the following school fiscal year.

(3) At such election the proposition shall be in substantially the following form:

PROPOSITION

Shall there be organized within the area comprising the School Districts of .... (elementary districts shall be listed by county), State of Montana, a community college district for the offering of 13th- and 14th-year courses, to be known as the Community College District of ...., Montana, under the provisions of the laws authorizing community college districts in Montana, as prayed in the petition filed with the Board of Regents at Helena, Montana, on the .... day of ...., 19...?

☐ FOR organization.

☐ AGAINST organization.

History: En. 75-8106 by Sec. 453, Ch. 5, L. 1971; amd. Sec. 3, Ch. 406, L. 1971; R.C.M. 1947, 75-8106.

Cross-References

Regular school election day and special school elections, 20-20-105.

20-15-204. Election of trustees — districts from which elected — terms of office. (1) The regents shall provide for the election of trustees of the proposed community college district at the election held for the approval of its organization. Seven trustees shall be elected at large, except that should there be in such proposed community college district one or more high school districts or part of a high school district within the community college district with more than 43% and not more than 50% of the total population of the proposed district, as determined by the last census, then each such district or part of district shall elect three trustees and the remaining trustees shall be elected at large from the remainder of the proposed community college district. Should any such high school district or such part of a high school district have more than 50% of the population of the proposed district, then four trustees shall be elected from such high school district or such part of high school district and three trustees at large from the remainder of the proposed community college district.

(2) If the trustees are elected at large throughout the entire proposed community college district, the three receiving the greatest number of votes shall be elected for a term of 3 years, the two receiving the next greatest number of votes, for a term of 2 years, and the two receiving the next greatest number of votes, for a term of 1 year. If the trustees are elected in any manner other than at large throughout the entire proposed community college district, then the trustees elected shall determine by lot the three who shall serve for 3 years, the two who shall serve for 2 years, and the two who shall serve for 1 year. Thereafter, all trustees elected shall serve for terms of 3 years each.

History: En. 75-8107 by Sec. 454, Ch. 5, L. 1971; amd. Sec. 4, Ch. 406, L. 1971; amd. Sec. 14, Ch. 137, L. 1973; amd. Sec. 1, Ch. 159, L. 1975; R.C.M. 1947, 75-8107.

20-15-205. Call for nominations of trustee candidates and notice. (1) A call for nominations of trustee candidates for the proposed community college district shall be made by the regents.

(2) Notice of the call for nominations shall be published in at least one newspaper of general circulation in each county or any portion of a county included in the proposed community college district once a week for 3 consecutive weeks, the last insertion to be no less than 5 weeks prior to the date

of the election. Such notice shall describe the geographical composition of the board of trustees membership, nomination procedure, and the proposal for the organization of a community college district.

History: **En. 75-8108 by Sec. 455, Ch. 5, L. 1971; amd. Sec. 5, Ch. 406, L. 1971; R.C.M. 1947, 75-8108.**

20-15-206. Nomination of candidates and provision of sample ballot. (1) Nominations of candidates for the trustee positions must be filed with the regents at least 30 days prior to the date of the election. Any five qualified electors may file nominations of as many persons as are to be elected to the board of trustees of the proposed community college district from their respective community college trustee election areas.

(2) The regents shall provide the trustees of each district ordered to conduct the community college district organization election with a sample of the ballot for the election of the board of trustees. Such sample ballot shall be reproduced by the trustees in a sufficient number to be used as the trustee election ballot.

History: **En. 75-8109 by Sec. 456, Ch. 5, L. 1971; amd. Sec. 6, Ch. 406, L. 1971; R.C.M. 1947, 75-8109.**

20-15-207. Notice of organization election. Notice of the community college district organization election and the accompanying election of a board of trustees for the proposed community college district shall be given by the regents, by publication in at least one newspaper of general circulation in each county or any portion of a county included in the proposed community college district, once a week for 3 consecutive weeks, the last insertion to be no more than 1 week prior to the date of the election.

History: **En. 75-8110 by Sec. 457, Ch. 5, L. 1971; amd. Sec. 7, Ch. 406, L. 1971; R.C.M. 1947, 75-8110.**

20-15-208. Conduct of election. The election for the organization of the community college district and the election of trustees for such community college district shall be conducted, in accordance with the school election laws, by the trustees of the elementary districts ordered to call such election. The cost of conducting such election shall be borne by the districts.

History: **En. 75-8111 by Sec. 458, Ch. 5, L. 1971; R.C.M. 1947, 75-8111.**

Cross-References

School elections generally, Title 20, ch. 20.

Election expenses, 20-20-107.

20-15-209. Determination of approval or disapproval of proposition — subsequent procedures if approved. (1) To carry, the proposal to organize the community college district must receive a majority of the total number of votes cast thereon, and the coordinator of community college districts, from the results so certified and attested, shall determine whether the proposal has received the majority of the votes cast thereon for each county within the proposed district and shall certify the results to the regents. Approval for the organization of a new community college district shall be granted at the discretion of the legislature acting upon the recommendation of the regents. Should the certificate of the coordinator of community college districts show that the proposition to organize such community college district has received a majority of the votes cast thereon in each county within the proposed district, the regents may make an order declaring the community college district organized and cause a copy thereof to be recorded in the office of the county clerk and recorder in each county in which a portion of such new district is located. If the proposition carries, the regents also shall determine which candidates have been elected trustees. Should the proposition to organize the community college district fail to receive a majority of the votes cast thereon, no tabulation shall be made to determine the candidates elected trustees.

(2) Within 30 days of the date of the organization order, the regents shall set a date and call an organization meeting for the board of trustees of the community college district and shall notify the duly elected trustees of their membership and of the organization meeting. Such notification shall designate a temporary chairman and secretary for the purposes of organization.

History: En. 75-8112 by Sec. 459, Ch. 5, L. 1971; amd. Sec. 1, Ch. 164, L. 1971; amd. Sec. 2, Ch. 407, L. 1971; R.C.M. 1947, 75-8112.

20-15-210. Qualification and organization of board of trustees. (1) Newly elected members of the board of trustees of the community college district shall be qualified by taking the oath of office prescribed by the constitution of Montana. At the organization meeting called by the board of regents, the board of trustees shall be organized by the election of a chairman and a secretary.

(2) The treasurer of the community college district is the county treasurer of the county in which the community college facilities are located. The duties of the county treasurer are referenced in 20-9-206, 20-9-212, 20-9-222, and 20-9-224.

History: En. 75-8113 by Sec. 460, Ch. 5, L. 1971; amd. Sec. 33, Ch. 100, L. 1973; R.C.M. 1947, 75-8113; amd. Sec. 28, Ch. 392, L. 1979.

Cross-References

Constitutional oath of office, Art. III, sec. 3, Mont. Const.

Declaration in lieu of oath, 1-6-104.

Oath of office, 20-1-202.

20-15-211 through 20-15-218 reserved.

20-15-219. Qualifications for office of trustee — nominating petitions. (1) Any person who is qualified to vote in a community college district under the provisions of 20-20-301 is eligible for the office of community college trustee.

(2) Any five electors of a community college district qualified under the provisions of 20-20-301 may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. A nominating petition containing the signatures of the five electors and the name of each person nominated for candidacy must be submitted to the election clerk designated by the board of trustees no less than 30 days before the regular school election day at which he is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated must also be indicated.

History: En. Sec. 3, Ch. 392, L. 1979.

Cross-References

Regular school election day and special school elections, 20-20-105.

20-15-220. Trustee election ballot. (1) The trustee election ballot must be substantially in the following form:

Official Ballot
Community College Trustee Election
Instructions to Voters

Make an "X" or similar mark in the vacant square before the name of the candidate for whom you wish to vote.

Vote for (indicate number to be elected) for a 3-year term.

☐	List the names of the candidates for the 3-year term with a vacant square in front of each name.

Vote for (indicate number to be elected) for a 2-year term.

☐	List the names of the candidates for the 2-year term with a vacant square in front of each name.

Vote for (indicate number to be elected) for a 1-year term.

☐	List the names of the candidates for the 1-year term with a vacant square in front of each name.

(2) In preparing the ballots, only those portions of the prescribed ballot that are applicable to the election to be conducted need be used. The ballot must also be prepared with blank lines and vacant squares in front of the lines in a sufficient number to allow write-in voting for each trustee position that is subject to election.

History: **En. Sec. 4, Ch. 392, L. 1979.**

20-15-221. Election of trustees after organization of community college district. (1) After organization, the registered electors of the community college district qualified to vote under the provisions of 20-20-301 shall annually vote for trustees on the regular school election day provided for in 20-3-304. The election shall be conducted in accordance with the election provisions of this title whenever such provisions are made applicable to community college districts. Such elections shall be conducted by the component elementary school districts within such community college district upon the order of the board of trustees of the community college district. The order shall be transmitted to the appropriate trustees not less than 40 days prior to the regular school election day.

(2) Notice of the community college district trustee election shall be given by the board of trustees of the community college district by publication in one or more newspapers of general circulation within each county, not less than once a week for 2 consecutive weeks, the last insertion to be no more than 1 week prior to the date of the election. This notice shall be in addition to the election notice to be given by the trustees of the component elementary districts under the school election laws.

(3) Should trustees be elected other than at large throughout the entire district, then only those qualified voters within the area from which the trustee or trustees are to be elected shall cast their ballots for the trustee or trustees from that area. In addition to the nominating petition required by

20-15-219(2), all candidates for the office of trustee shall file their declarations of candidacy with the secretary of the board of trustees of the community college district not less than 30 days prior to the date of election. If an electronic voting system or voting machines are not used in the component elementary school district or districts which conduct the election, the board of trustees of the community college district shall cause ballots to be printed and distributed for the polling places in such component districts at the expense of the community college district, but in all other respects said elections shall be conducted in accordance with the school election laws. All costs incident to election of the community college trustees shall be borne by the community college district, including one-half of the compensation of the judges for the school elections; provided that if the election of the community college district trustees is the only election conducted, the community college district shall compensate the district for the total cost of the election.

History: En. 75-8114 by Sec. 461, Ch. 5, L. 1971; amd. Sec. 2, Ch. 121, L. 1977; R.C.M. 1947, 75-8114; amd. Sec. 29, Ch. 392, L. 1979.

Cross-References

School elections, Title 20, ch. 20.

Regular school election day and special school elections, 20-20-105.

Election expenses, 20-20-107.

20-15-222. Results of election — qualifying oath — term of office. (1) When the board of trustees of the community college district has received all the certified results of the election from the component elementary districts, the then-qualified members of the board of trustees of such community college district shall tabulate the results so received, shall declare and certify the candidate or candidates receiving the greatest number of votes to be elected to the position or positions to be filled, and shall declare and certify the results of the votes cast on any proposition presented at such election.

(2) (a) No person who receives a certificate of election as a community college trustee may assume the trustee position until he has qualified by taking an oath of office prescribed by the constitution of Montana at the next regularly scheduled meeting of the board of trustees after receipt of the certificate of election.

(b) If the elected person does not qualify in accordance with this requirement, another person must be appointed in a manner provided by 20-15-223 and shall serve until the next regular election.

(3) After a person has qualified for a trustee position, he shall hold such position for the term of the position and until his successor has been elected or appointed and has been qualified.

History: En. 75-8115 by Sec. 462, Ch. 5, L. 1971; R.C.M. 1947, 75-8115; amd. Sec. 5, Ch. 392, L. 1979.

Cross-References

Constitutional oath of office, Art. III, sec. 3, Mont. Const.

Declaration in lieu of oath, 1-6-104.

Oath of office, 20-1-202.

20-15-223. Vacancies. (1) A community college trustee position is vacant whenever the incumbent:

(a) dies;

(b) resigns; or

(c) is removed under the provisions of 20-15-227.

(2) A trustee position is also vacant whenever an elected candidate fails to qualify under the provisions of 20-3-307.

(3) Any vacancy of a trustee position shall be filled by appointment by majority vote of the remaining trustees, and the person appointed shall hold office until the next regular school election day, when a trustee shall be elected for the remainder of the unexpired term.

History: **En. 75-8116 by Sec. 463, Ch. 5, L. 1971; R.C.M. 1947, 75-8116; amd. Sec. 30, Ch. 392, L. 1979.**

Cross-References

Regular school election day and special school elections, 20-20-105.

20-15-224. Board of trustees — organization, meetings, quorum, mileage, and seal. (1) (a) The trustees of each community college district shall annually organize as a governing board of the community college district at the next regularly scheduled meeting after the regular election day and after the issuance of the election certificate to the newly elected trustees.

(b) In order to organize, the trustees of the community college district shall be given notice by the coordinator of the time and place where the organization meeting will be held, and at such meeting they shall choose one of their members as chairman and as secretary. In addition, the trustees may employ or appoint a competent person who is not a member of the trustees as the clerk of the community college district.

(c) The chairman and secretary of the trustees of the community college district shall serve until the next organization meeting. The chairman shall preside at all meetings of the trustees in accordance with the customary rules of order. He shall perform the duties prescribed by this title and any other duties that normally pertain to such office.

(2) The board of trustees of the community college shall hold monthly meetings within the community college district on such day of the month the trustees may set. The president and secretary of the board or a majority of the board may also call special meetings of the board of trustees at any time and place within the community college district if in their judgment necessity requires it. The secretary of the board shall give each member a 48-hour written notice of all special meetings.

(3) A majority of the board of trustees shall constitute a quorum for the transaction of business, except that no contract shall be let, teacher employed or dismissed, or bill approved unless a majority of the total board membership shall vote in favor of such action.

(4) A member of the board of trustees shall receive mileage as provided for in 2-18-503 for the distance necessarily traveled in going to and returning from the place of the meeting and his place of residence each day that such trip is actually made.

(5) The board shall keep a common seal with which to attest its official acts.

History: **En. 75-8117 by Sec. 464, Ch. 5, L. 1971; amd. Sec. 1, Ch. 163, L. 1971; amd. Sec. 3, Ch. 121, L. 1977; R.C.M. 1947, 75-8117; (1)En. Sec. 8, Ch. 392, L. 1979.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Disrupting meeting as disorderly conduct, 45-8-101.

20-15-225. Powers and duties of trustees. (1) The trustees of a community college district shall, subject to supervision by the board of regents:

(a) have general control and supervision of the community college;

(b) adopt rules, not inconsistent with the constitution and the laws of the state, for the government and administration of the community college;

(c) grant certificates and degrees to the graduates of the community college;

(d) keep a record of their proceedings;

(e) when not otherwise provided by law, have control of all books, records, buildings, grounds, and other property of the community college;

(f) receive from the state board of land commissioners; other boards, agencies, or persons; or the government of the United States all funds, income, and other property the community college may be entitled to receive or accept and use and appropriate the property for the specific purpose of the entitlement, grant, or donation;

(g) have general control of all receipts and disbursements of the community college;

(h) appoint and dismiss a president and faculty for the community college; appoint and dismiss any other necessary officers, agents, and employees; fix their compensation; and set the terms and conditions of their employment;

(i) administer the tuition provision and otherwise govern the students of the community college district in accordance with the provisions of this chapter;

(j) call and conduct the elections of the district in accordance with the school election chapter of this title;

(k) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of this title;

(l) establish employee benefits, other than retirement benefits, and fix their limits in accordance with 2-18-701 through 2-18-704; and

(m) participate in district boundary change actions in accordance with the provisions of the district organization chapter of this title.

(2) The trustees of a community college district shall hold in trust all real and personal property of the district for the benefit of the college and students.

(3) The trustees of a community college district may enter into agreements with the western interstate commission for higher education, or similar intrastate, interstate, or international agreements, for the benefit of the district and students.

History: En. 75-8117.1 by Sec. 5, Ch. 121, L. 1977; R.C.M. 1947, 75-8117.1; (2), (3)En. Secs. 10, 11, Ch. 392, L. 1979; amd. Sec. 31, Ch. 392, L. 1979.

Cross-References

Applicability of Public Employees' Retirement System, 19-3-403.

Teachers' Retirement System, Title 19, ch. 4.

Elementary districts, Title 20, ch. 6, part 2.

School elections, Title 20, ch. 20.

Governmental Code of Fair Practices, Title 49, ch. 3.

20-15-226. Personal liability of trustees. (1) The trustees of each community college district are responsible for the proper administration and utilization of all money of the district. Failure or refusal to do so constitutes grounds for removal from office.

(2) Trustees consenting to illegal use of money are jointly and individually liable to the district for any losses sustained by the district. The county attorney shall prosecute any proceedings arising pursuant to this section, or a party seeking such action may retain private counsel. The party commencing the action is liable for the costs if the action fails.

History: **En. Sec. 9, Ch. 392, L. 1979.**

Cross-References

Penalty for violation of school laws, 20-1-207.

Official misconduct, 45-7-401.

20-15-227. Trustee removal procedure. (1) Any person may seek the removal of a community college trustee by filing a complaint with the board of county commissioners, containing charges based on one or more of the grounds cited in 20-15-228.

(2) If upon receiving such a complaint it appears that there is probable cause for removal, the board of county commissioners shall suspend such trustee from his trustee position until charges can be heard in the appropriate district court. The board of county commissioners shall then transmit the complaint, together with a statement of suspension, to the district court.

History: **En. Sec. 6, Ch. 392, L. 1979.**

20-15-228. Grounds for removal. A community college trustee may be removed whenever he:

(1) moves his residence from the applicable community college district;

(2) is no longer a registered elector of the community college district under the provisions of 20-20-301;

(3) is absent from the district 60 consecutive days;

(4) fails to attend three consecutive meetings of the trustees without reasonable cause;

(5) fails to perform responsibilities in accordance with 20-15-226; or

(6) ceases to have the capacity to hold office.

History: **En. Sec. 7, Ch. 392, L. 1979.**

Cross-References

Residence — rules for determining, 1-1-215.

20-15-229. Audit of district. A community college district is subject to audit by the legislative auditor in the same manner as a state agency. A community college district may contract for an audit with a private accounting firm, subject to approval of the legislative auditor.

History: **En. Sec. 14, Ch. 392, L. 1979.**

Cross-References

Legislative Audit Act, Title 5, ch. 13.

20-15-230 reserved.

20-15-231. Annexation of territory of districts to community college district. (1) Whenever 10% of the registered electors of an elementary district or districts of a county that is contiguous to the existing community college district petition the board of trustees of a community college district for annexation of the territory encompassed in such elementary school districts, the board of trustees of the community college district may order an annexation election in the area defined by the petition. Such election shall be held on the next general election day.

(2) (a) Prior to the election on the question of annexation, the trustees shall adopt a plan that includes:

(i) a schedule that provides for the orderly transition from the existing trustee representation to the representation required by 20-15-204, with such transition period not to exceed 3 years from the date of the election on the question of annexation;

(ii) provisions relating to the assumption or nonassumption of existing community college district bonded indebtedness by the annexed area and provisions relating to the responsibilities of the annexed area for any bonded indebtedness if it withdraws from the district; and

(iii) a procedure by means of which the electors of the annexed area may withdraw the annexed area from the community college district and the conditions of such withdrawal.

(b) The plan required by this subsection (2) may not be changed by the trustees without the approval of a majority of the electors of the annexed area voting on the question. The bonding provisions of the plan set forth pursuant to subsection (2)(a)(ii) may not be changed.

(3) The election shall be conducted in the proposed area for annexation in accordance with the requirements of the community college organization election, except that the board of trustees of the community college shall perform the requirements of the board of regents and there shall not be an election of the board of trustees of the community college.

(4) The proposition on the ballot shall be as follows:

Shall school districts .... be annexed to and become a part of the Community College District of ...., Montana?

☐ FOR annexation.

☐ AGAINST annexation.

(5) To carry, the proposals to annex must receive a majority of the total votes cast thereon. Upon receipt of the certified results of the election from the elementary districts encompassed in the proposed area to be annexed, the board of trustees of the community college district shall canvass the vote and declare the results of the election. If the annexation proposition carries, a certified copy of the canvassing resolution shall be filed in the office of the county clerk and recorder of the county encompassing the area to be annexed and, upon such filing, the area to be annexed shall then become a part of the community college district.

History: En. 75-8125 by Sec. 472, Ch. 5, L. 1971; amd. Sec. 1, Ch. 162, L. 1971; R.C.M. 1947, 75-8125; amd. Sec. 4, Ch. 575, L. 1983; amd. Sec. 1, Ch. 474, L. 1985.

20-15-232 through 20-15-240 reserved.

20-15-241. Community college service regions — creation. (1) The governing body of an elementary school district, high school district, county, or municipality not within a community college district may designate itself a community college service region as provided in this section.

(2) A service region may be designated only if, within 12 months preceding any designation, the following conditions are met:

(a) the service plan required by subsection (3) is available;

(b) the board of trustees of the community college district that will offer services within the region has approved the designation;

(c) the electors within the region have approved the designation by a majority of votes cast on the question in an election held on a general election day; and

(d) the board of regents has approved the designation.

(3) (a) At least 90 days prior to the granting of any of the approvals listed in subsections (2)(b) through (d), a written plan must be made available which:

(i) details the services the community college district will offer within the region;

(ii) details who will be eligible to use the services and the charges that will be made to users;

(iii) indicates the facilities that will be used to house the services;

(iv) lists the direct and indirect costs of the services and the apportionment of those costs between the community college district and the governing body designating the service region;

(v) estimates the number of persons expected to use the services within the region; and

(vi) estimates the mill levy necessary to fund the service region.

(b) The plan may be revised jointly by the region governing body, board of regents, and the board of trustees of the community college district as such revision may be necessary.

(4) A designation is effective for 5 years and after 5 years is effective unless rescinded by a majority of electors casting votes on the question in an election held on any general election day following expiration of the 5-year period. The question on rescission must be put on the ballot when requested at least 90 days prior to the election by the governing body designating the service region, by the community college board, or by a petition signed by 20% of the registered electors within the service region. The rescission is effective at the end of the first full academic year following the election rescinding the district designation.

History: **En. Sec. 1, Ch. 575, L. 1983.**

Cross-References

Tax levy for community college service region, 20-15-314.

Part 3

Finance

20-15-301. Sources of financing for and types of capital expenditures. (1) The board of trustees of any community college district is hereby vested with the power and authority to:

(a) build, enlarge, alter, repair, or acquire by purchase school buildings and dormitories;

(b) furnish and equip such buildings;

(c) purchase sites for such buildings;

(d) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds chapter of this title.

(2) The board of trustees of a community college district is further vested with the power and authority to accept or borrow moneys for the purposes of this section and to repay such obligations from the various revenues of the college.

History: En. 75-8122 by Sec. 469, Ch. 5, L. 1971; amd. Sec. 2, Ch. 419, L. 1973; R.C.M. 1947, 75-8122.

Cross-References

School bonds, Title 20, ch. 9, part 4.

20-15-302. Repealed. Sec. 8, Ch. 495, L. 1981.

History: En. Sec. 1, Ch. 401, L. 1971; R.C.M. 1947, 75-8127; amd. Sec. 32, Ch. 392, L. 1979.

20-15-303. Repealed. Sec. 8, Ch. 495, L. 1981.

History: En. Sec. 2, Ch. 401, L. 1971; amd. Sec. 1, Ch. 243, L. 1975; R.C.M. 1947, 75-8128.

20-15-304. Federal and state aid. The board of trustees of a community college district is hereby authorized to accept funds from the federal government or the state of Montana, their instrumentalities, or any of their agencies in aid of any one or more purposes or in maintaining and operating the community college.

History: En. Sec. 4, Ch. 401, L. 1971; R.C.M. 1947, 75-8130.

20-15-305. Adult education tax levy. A community college shall be considered a district for the purposes of adult education and under the provisions for adult education may levy a 1-mill tax for the support of its adult education program when the superintendent of public instruction approves such program.

History: En. Sec. 3, Ch. 401, L. 1971; R.C.M. 1947, 75-8129.

Cross-References

Adult education, Title 20, ch. 7, part 7.

20-15-306. Repealed. Sec. 8, Ch. 495, L. 1981.

History: En. Sec. 5, Ch. 401, L. 1971; R.C.M. 1947, 75-8131.

20-15-307. Repealed. Sec. 8, Ch. 495, L. 1981.

History: En. Sec. 6, Ch. 401, L. 1971; amd. Sec. 28, Ch. 266, L. 1977; R.C.M. 1947, 75-8132.

20-15-308. Deposit of moneys. Community college district moneys shall be deposited with the county treasurer of the county where the community college is located or with other depositories approved by the regents.

History: En. Sec. 7, Ch. 401, L. 1971; R.C.M. 1947, 75-8133.

20-15-309. Proposed budget. The board of trustees of a community college district shall submit a proposed budget to the board of regents by August 15 immediately preceding each regular legislative session. The proposed budget shall be for the next biennium and in a form approved by the state budget director and the commissioner of higher education and shall be calculated in the same manner as the operating budget described in 20-15-312. The board of regents shall review the proposed budget and all its components and make any changes it determines necessary. By the following September

1, the board of regents shall submit its proposal for funding the community colleges to the budget director and the legislative fiscal analyst.

History: **En. Sec. 1, Ch. 495, L. 1981.**

Cross-References

School budgeting procedure applicable to community colleges, 20-9-101.

Completion, filing, and delivery of final budgets, 20-9-134.

Emergency budget petitions, 20-9-161, 20-9-163.

Emergency budgets, 20-9-165.

20-15-310. Appropriation. It is the intent of the legislature that all community college spending, other than from restricted funds or funds generated by an optional, voted levy, be controlled under provisions of the state general appropriations act. The unrestricted budget shall be based on a calculated dollar amount per full-time equivalent student. The student count may not include those enrolled in community service courses as defined by the board of regents.

History: **En. Sec. 2, Ch. 495, L. 1981.**

20-15-311. Funding sources. The annual operating budget of a community college district shall be financed from the following sources:

(1) the estimated revenues to be realized from student tuition and fees, except those related to community service courses as defined by the board of regents;

(2) a mandatory mill levy on the community college district;

(3) the 1-mill adult education levy authorized under provisions of 20-15-305;

(4) the state general fund appropriation;

(5) an optional voted levy on the community college district that shall be submitted to the electorate in accordance with general school election laws;

(6) all other income, revenue, balances, or reserves not restricted by a source outside the community college district to a specific purpose;

(7) income, revenue, balances, or reserves restricted by a source outside the community college district to a specific purpose. Student fees paid for community service courses as defined by the board of regents shall be considered restricted to a specific purpose;

(8) income from a political subdivision that is designated a community college service region under 20-15-241.

History: **En. Sec. 3, Ch. 495, L. 1981; amd. Sec. 3, Ch. 575, L. 1983.**

20-15-312. Calculation and approval of operating budget. (1) Annually by June 15, the board of trustees of a community college shall submit an operating budget to the board of regents for their review. The operating budget of the community college shall be financed in the following manner:

(a) General fund appropriation. The general fund appropriation shall represent a specific percentage of the total unrestricted budget authorized by the legislature and approved by the regents. This percentage shall be specified in the appropriations act appropriating funds to the community colleges for each biennium.

(b) An estimate of revenues to be generated by student tuition and fees, and all other unrestricted income, revenues, or balances shall be added to the state general fund appropriation and the total subtracted from the total unrestricted budget. The difference shall be obtained by a mandatory levy.

(c) The funding obtained in subsection (b) of subsection (1) is the amount of the unrestricted budget. A detailed expenditure schedule for the unrestricted budget shall be submitted to the board of regents for their review and approval.

(d) The amount estimated to be raised by the voted levy shall be detailed separately in an expenditure schedule.

(e) The spending of each restricted funding source shall be detailed separately in an expenditure schedule.

(f) The expenditure schedules provided in subsections (c), (d), and (e) of subsection (1) shall represent the total operating budget of the community college.

(g) If revenues to the unrestricted budget exceed estimates, the excess shall be used to reduce the mandatory levy in the subsequent year.

(2) The board of regents shall review the proposed total operating budget and all its components and make any changes it determines necessary. A board of trustees of a community college district shall operate within the limits of the operating budget approved by the board of regents.

History: En. Sec. 4, Ch. 495, L. 1981.

Cross-References

School budgeting procedure applicable to community colleges, 20-9-101.

Completion, filing, and delivery of final budgets, 20-9-134.

Emergency budget petitions, 20-9-161, 20-9-163.

Emergency budgets, 20-9-165.

20-15-313. Tax levy. On the second Monday in August, the board of county commissioners of any county where a community college district is located shall fix and levy a tax on all the real and personal property within the community college district at the rate required to finance the mandatory mill levy prescribed by subsection (1)(b) of 20-15-312 and the voted levy prescribed by subsection (5) of 20-15-311 if one has been approved by the voters. When a community college district has territory in more than one county, the board of county commissioners in each county shall fix and levy the community college district tax on all the real and personal property of the community college district situated in its county.

History: En. Sec. 5, Ch. 495, L. 1981.

Cross-References

Property tax levies, Title 15, ch. 10.

20-15-314. Tax levy for community college service region. A governing body designating a community college service region as provided in 20-15-241 may levy a tax on all real and personal property within the region at a rate required to finance the services offered by a community college district for the region. The levy is in addition to any other levies allowed by law and is not subject to any statutory or charter limitations on levies. The levy must be made at the same time and in the same manner as the general levy of the political subdivision designating the region is made, and the revenues generated thereby must be collected at the same time and in the same manner. Within 30 days of collection, the appropriate revenues must be transmitted to the participating community college district.

History: En. Sec. 2, Ch. 575, L. 1983.

Cross-References

Community college service regions, 20-15-241.

Part 4

Relationship to Other Laws

20-15-401. Purpose. It is the purpose of this chapter to establish the governance of community college districts in Montana. The legislature intends that the board of regents and the local boards of trustees of community college districts coordinate their responsibilities to insure an orderly development of educational services to the citizens of Montana in accordance with this chapter.

History: **En. Sec. 1, Ch. 392, L. 1979.**

20-15-402. Precedence of community college chapter. Unless specifically identified in any other sections of the school laws prescribed in this title, community college districts are governed by the provisions of this chapter. Should there be a conflict between other requirements of this title and the provisions of this chapter regulating community college districts, the provisions of this chapter shall govern.

History: **En. Sec. 2, Ch. 392, L. 1979.**

20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-55-106, 15-70-301, 15-70-322, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district.

History: **En. Sec. 12, Ch. 392, L. 1979; amd. Sec. 6, Ch. 495, L. 1981; amd. Sec. 2, Ch. 570, L. 1981; amd. Sec. 76, Ch. 575, L. 1981; amd. Sec. 27, Ch. 465, L. 1983; amd. Sec. 6, Ch. 15, L. 1985; amd. Sec. 72, Ch. 370, L. 1987; amd. Sec. 5, Ch. 512, L. 1987; amd. Sec. 58, Ch. 587, L. 1987.**

Compiler's Comments

1987 Amendments: Chapter 370 in (1) deleted reference to 7-8-2215.

Chapter 512 in (1) deleted reference to 18-1-102 and 18-1-112.

Chapter 587 in (1) deleted reference to 15-18-108.

20-15-404. Trustees to adhere to certain other laws. Unless the context clearly indicates otherwise, the trustees of a community college district shall:

(1) adhere to the teachers' retirement provisions of Title 19, chapter 4, as amended;

(2) adhere to the provisions of 20-1-201, 20-1-205, 20-1-211, and 20-1-212, as amended;

(3) adhere to the school property provisions of 20-6-605, 20-6-621, 20-6-622, 20-6-624, 20-6-631, and 20-6-633 through 20-6-636, as amended;

(4) adhere to the adult education provisions of 20-7-701 through 20-7-713, as amended;

(5) adhere to the administration of finances provisions of 20-9-115, 20-9-134, subsections (2), (3), (4), and (5) of 20-9-161, 20-9-163, 20-9-165, 20-9-207, 20-9-208, 20-9-210, 20-9-215, and 20-9-221 through 20-9-224, as amended;

(6) adhere to the school bond provisions of 20-9-401 through 20-9-412, 20-9-421 through 20-9-446, 20-9-451 through 20-9-456, and 20-9-461 through 20-9-465, as amended;

(7) adhere to the special purpose funds provisions of 20-9-502, 20-9-503, 20-9-507, 20-9-508, and 20-9-511, as amended;

(8) adhere to the educational cooperative agreements provisions of 20-9-701 through 20-9-704, as amended;

(9) adhere to the school elections provisions of Title 20, chapter 20, as amended;

(10) adhere to the students' rights provisions of 20-25-511 through 20-25-516, as amended; and

(11) adhere to the health provisions of 50-1-206.

History: En. Sec. 13, Ch. 392, L. 1979; amd. Sec. 7, Ch. 495, L. 1981; amd. Sec. 1, Ch. 270, L. 1983; amd. Sec. 73, Ch. 370, L. 1987.

Compiler's Comments

1987 Amendment: In (4) changed "20-7-712" to "20-7-713".

CHAPTER 16

VOCATIONAL-TECHNICAL CENTER SYSTEM

Part 1 — General Provisions

20-16-101. Powers and duties of board of regents.
20-16-102. Sole state agency for federal vocational education requirements.
20-16-103. Duties of the deputy commissioner of vocational-technical center education.
20-16-104. Local administration of vocational-technical center.
20-16-105. Local advisory boards.
20-16-106. Vocational-technical center designation.
20-16-107. Existing center employees.
20-16-108. Lease or purchase of property for vocational-technical center purposes.
20-16-109. Vocational-technical center equipment.

Part 2 — Finance

20-16-201. State treasurer custodian of vocational education money.
20-16-202. Sources of financing for vocational-technical center budgets — distribution of funds.
20-16-203. Source of financing for vocational-technical center facility maintenance.
20-16-204. Vocational-technical center funding — nongeneral fund money expended first — reversion of general fund money.
20-16-205. Tuition rates.

20-16-206. Student fees and disposition of collected fees.
20-16-207. Additional levy by school district — procedure.

Part 1

General Provisions

20-16-101. Powers and duties of board of regents. The board of regents has general administrative and supervisory control over vocational-technical center education and shall:

(1) establish and when necessary amend a plan for the orderly development of vocational-technical center education that is consistent with federal and state law, controlled to prevent unnecessary duplication, and funded to ensure necessary growth and quality education;

(2) adopt standards for courses and programs;

(3) implement a review process for establishing and deleting programs and courses that recognizes the present and future needs of employers and provides qualified graduates for positions for which there is or may in the near future be a demand;

(4) establish student entrance and graduation requirements;

(5) appoint a director, to serve at the pleasure of the board, for each vocational-technical center and establish minimum qualifications for faculty, directors, administrative staff, and other personnel;

(6) appoint a deputy commissioner of vocational-technical center education, to serve at the pleasure of the board;

(7) establish student tuition and prescribe the bases and limitations for charging of fees, taking into account funding available from all other sources and the provisions of 20-16-205;

(8) determine the amount to be paid for the lease of buildings;

(9) adopt budget requests for the vocational-technical center education system;

(10) establish a procedure by which students can receive part of their education and training through programs, courses, and on-the-job training offered by the private sector and not available at the centers;

(11) establish a procedure by which qualified persons in the private sector can participate in the training and teaching of students in the centers' classrooms when such persons have training, knowledge, and skills not available through the centers' faculty;

(12) provide means by which the centers' faculty can obtain advanced education and training in new areas and either be reimbursed for their expenses or raised to a higher salary level, or both;

(13) establish for the various centers uniform policies for recordkeeping; financial transactions; accounting; maintenance; recruiting, guidance, and placement of students; examinations; personnel relations; and other matters as determined by the board;

(14) negotiate with the bargaining representative for personnel of each center or the personnel of the center system in a manner consistent with state and federal law;

(15) work with other institutions of higher education to implement the transfer of course credits between those institutions and the vocational-technical centers; and

(16) adopt rules and procedures to implement this section and to carry out any other powers and duties of the board.

History: En. Sec. 1, Ch. 658, L. 1987.

20-16-102. Sole state agency for federal vocational education requirements. (1) The board of regents is the sole state agency for purposes of the 1984 federal Carl D. Perkins Vocational Education Act, as may be amended, which requires a state participating in programs under that act to designate a state board or agency as the sole state agency responsible for administration or supervision of the administration of those programs.

(2) The board of regents shall contract with the superintendent of public instruction for the administration and supervision of K-12 vocational education programs, services, and activities allowed by the 1984 federal Carl D. Perkins Vocational Education Act, as may be amended, and in concert with the state plan for vocational education required by the federal act. The board of regents may contract with other agencies for the administration and supervision of other vocational education programs, services, and activities that receive funding allowed by the 1984 federal Carl D. Perkins Vocational Education Act, as may be amended.

History: En. Sec. 2, Ch. 658, L. 1987.

20-16-103. Duties of the deputy commissioner of vocational-technical center education. The deputy commissioner of vocational-technical center education shall, under the rules and policies of the board of regents:

(1) be the chief administrative officer for the board of regents for the administration of its vocational-technical center rules and policies;

(2) employ, within the limits of any legislative appropriation and with the confirmation of the board of regents, the staff necessary for the state supervision and administration of the board's vocational-technical center rules and policies;

(3) provide supervisory and consultative assistance to centers;

(4) report the status of vocational-technical center education in Montana when requested by the board of regents; and

(5) perform any other duties assigned by the board of regents.

History: En. Sec. 4, Ch. 658, L. 1987.

20-16-104. Local administration of vocational-technical center. (1) Subject to the requirements of the laws of the state of Montana and the policies and rules of the board of regents, the director of a vocational-technical center has administrative and supervisory control of the center and shall:

(a) employ personnel for the vocational-technical center according to the policies and rules of the board of regents;

(b) develop and submit a recommended budget for the vocational-technical center;

(c) collect student tuition and fees;

(d) recommend to the board of regents:

(i) proposals regarding vocational-technical center programs, budgets, student services, and public service activities; and

(ii) campus development and program plans for individual vocational-technical center buildings;

(e) manage buildings at the vocational-technical center;

(f) receive and administer gifts and bequests to the vocational-technical center according to a written plan submitted to the board of regents; and

(g) perform any other duties not inconsistent with law and required by the board of regents.

(2) The director of a vocational-technical center may not enter into any contract that in any way creates a debt or obligation upon the state for the improvement or construction of vocational-technical center buildings.

History: En. 75-7710 by Sec. 413, Ch. 5, L. 1971; (amd. Sec. 11, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 11, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7710; amd. Sec. 3, Ch. 598, L. 1979; amd. Sec. 15, Ch. 658, L. 1987; Sec. 20-7-312, MCA 1985; redes. 20-16-104 by Sec. 33, Ch. 658, L. 1987.

Compiler's Comments

1987 Amendment: Substituted present section for former section that read: "(1) Subject to the requirements of the laws of the state of Montana and the policies of the superintendent of public instruction as administered by the state director of vocational education, the board of trustees operating a postsecondary vocational-technical center shall:

(a) employ, from among qualified applicants, a postsecondary vocational-technical center director;

(b) employ administrative personnel, faculty members, and employees for the postsecondary vocational-technical center according to the policies and procedures of the board of trustees;

(c) recommend, develop, and submit budgets for the postsecondary vocational-technical centers;

(d) establish and collect student tuition and fees;

(e) recommend to the superintendent of public instruction through the state director of vocational education:

(i) proposals regarding postsecondary vocational-technical center programs, budgets, student services, and public service activities; and

(ii) campus development and program plans for individual postsecondary vocational-technical center buildings;

(f) manage buildings erected and equipped on leased grounds;

(g) receive and administer gifts and bequests to the postsecondary vocational-technical center according to a written plan submitted to the superintendent of public instruction; and

(h) perform any other administrative responsibilities not inconsistent with law and required by the superintendent of public instruction.

(2) The board of trustees operating a postsecondary vocational-technical center may not enter into any contract that in any way creates a debt or obligation upon the state for the improvement or construction of postsecondary vocational-technical center buildings on leased property."

20-16-105. Local advisory boards. The board of trustees of a school district in which a vocational-technical center is located shall appoint a local advisory board, composed of at least five residents of the county where the center is located, to act in an advisory capacity to the center and the board of regents.

History: En. Sec. 3, Ch. 658, L. 1987.

20-16-106. Vocational-technical center designation. (1) Vocational-technical centers shall be designated by the board of regents upon direction of the legislature.

(2) The board of regents shall recognize the vocational-technical centers designated prior to July 1, 1987, in school district number 1 of Silver Bow County, high school district number 1 of Lewis and Clark County, high school district "A" of Cascade County, Missoula County high school, and high school district number 2 of Yellowstone County.

History: En. 75-7707 by Sec. 410, Ch. 5, L. 1971; (amd. Sec. 8, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 8, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M.

1947, 75-7707; amd. Sec. 14, Ch. 598, L. 1979; amd. Sec. 14, Ch. 658, L. 1987; Sec. 20-7-311, MCA 1985; redes. 20-16-106 by Sec. 33, Ch. 658, L. 1987.

Compiler's Comments

1987 Amendment: In (1), at beginning, deleted "Postsecondary", substituted "board of regents" for "superintendent of public instruction only", and at end deleted "Applications for designation must be made in accordance with the following procedure:

(a) The trustees of any high school district, of a county high school, of a community college district, or the governing board of any unit of the Montana university system may submit an application for designation of a postsecondary vocational-technical center to be operated by such trustees or governing board. The application for designation shall be submitted in accordance with the time, data, and form requirements prescribed by the superintendent of public instruction. Applicant high school districts, county high schools, or community college districts shall be located in a county with a taxable valuation of at least $45 million.

(b) Applications are to be presented to the superintendent of public instruction. The superintendent of public instruction shall examine the application and draft recommendations. The application, together with all recommendations, shall be presented by the superintendent of public instruction to the next following legislature"; and in (2) substituted "board of regents" for "superintendent of public instruction", before "postsecondary" deleted "presently designated", and substituted "designated prior to July 1, 1987" for "operated by the respective board of trustees".

Cross-References

Definition of various schools, 20-6-501.

Joint district construction and ownership of vocational-technical center, 20-9-404, 20-9-405.

Vocational-technical center highway signs — location — specifications, 60-2-216.

20-16-107. Existing center employees. (1) The rights of persons employed by a vocational-technical center under a collective bargaining agreement in effect during the period from July 1, 1987, to July 1, 1989, may not be impaired, and they may, at any time prior to July 1, 1989, exercise any right they have under a collective bargaining agreement to transfer to another position within the school district.

(2) A person employed by a center under a school district on June 30, 1989, becomes an employee of the board of regents on July 1, 1989.

(3) Following July 1, 1987, the employees of any center or the board of regents may apply to the board of personnel appeals for determination of the appropriate bargaining unit or units for the purposes of collective bargaining for a contract or contracts to be negotiated with the board of regents prior to July 1, 1989.

(4) If a person is employed by a center in any capacity on July 1, 1989, and has accumulated sick, vacation, or other leave and years of service with a school district, such leave and years of service shall be transferred fully regardless of the length of employment with the district in which the center is located.

History: En. Sec. 5, Ch. 658, L. 1987.

20-16-108. Lease or purchase of property for vocational-technical center purposes. (1) The state of Montana, acting through the board of regents, may lease, for a term not to exceed 40 years, any building or lands for a vocational-technical center.

(2) The state of Montana, acting through the board of regents and on demand of a school district, shall lease or purchase the equity or interest of the school district in any building, land, or other property at a vocational-technical center on terms agreed to between the board of regents and the school district. A purchase may be by lump-sum payment, time payments, the assumption of bonded indebtedness, or any other mutually agreeable method.

Money received by a school district from the lease or sale under this subsection (2) of the school district's equity or interest in a building, land, or other property must be credited to the debt service fund, building fund, general fund, or any combination of these funds, at the discretion of the trustees of the school district.

History: En. 75-7715 by Sec. 418, Ch. 5, L. 1971; R.C.M. 1947, 75-7715; amd. Sec. 15, Ch. 598, L. 1979; amd. Sec. 16, Ch. 658, L. 1987; Sec. 20-7-314, MCA 1985; redes. 20-16-108 by Sec. 33, Ch. 658, L. 1987.

Compiler's Comments

1987 Amendment: Substituted present section for former section that read: "(1) The state of Montana, acting by and through the superintendent of public instruction, is hereby empowered and authorized to enter into a lease agreement for a term not to exceed 40 years in order to lease to a district operating a postsecondary vocational-technical center any building or lands owned by the state and financed in whole or in part by an appropriation made by the legislature of the state of Montana for the purpose of supporting the district's postsecondary vocational-technical center. The consideration necessary to support such a lease may be nominal.

(2) The superintendent of public instruction is hereby authorized to transfer or direct transfer of title held by the state of Montana in buildings or lands financed in whole or in part by an appropriation by the state legislature to a district operating a postsecondary vocational-technical center, at any time the superintendent of public instruction deems such transfer to be in the best interests of both the state and the district involved, provided that this authorization extends only to buildings or lands which are to be used by the district for postsecondary vocational-technical education purposes."

Cross-References

Sale of county property to school district, 7-8-2216.

Leasing district property and disposition of any rentals, 20-6-607.

Selection of school sites, approval election, and lease of state lands, 20-6-621.

Authorization to lease buildings or land for school purposes, 20-6-625.

Additional levy for acquisition of land and school facilities, 20-9-353.

Joint district construction and ownership of vocational-technical center, 20-9-404, 20-9-405.

20-16-109. Vocational-technical center equipment. The equipment of a vocational-technical center designated prior to July 1, 1987, may not be transferred from the center for 2 years without consent of the school district board of trustees that operated the center prior to July 1, 1987.

History: En. Sec. 28, Ch. 658, L. 1987.

Part 2

Finance

20-16-201. State treasurer custodian of vocational education money. (1) The treasurer of the state of Montana is hereby designated as the custodian of all federal and state money designated, appropriated, or apportioned for vocational education. All money received from any federal or state source for the establishment, operation, or furtherance of vocational education in the state shall be deposited with the state treasurer. At the direction of the superintendent of public instruction, he shall disburse all money received for K-12 vocational education. At the direction of the board of regents, he shall disburse all money received for vocational-technical education and for vocational education other than K-12 vocational education.

(2) The state treasurer is the treasurer for all vocational-technical centers, and all money received by vocational-technical centers from any source shall be deposited in the state treasury pursuant to 17-6-105, unless the source of the money specifies deposit somewhere other than in the state treasury.

History: En. 75-7706 by Sec. 409, Ch. 5, L. 1971; (amd. Sec. 6, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 6, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M.

1947, 75-7706; amd. Sec. 16, Ch. 598, L. 1979; amd. Sec. 2, Ch. 682, L. 1979; amd. Sec. 17, Ch. 658, L. 1987; Sec. 20-7-322, MCA 1985; redes. 20-16-201 by Sec. 33, Ch. 658, L. 1987.

Compiler's Comments

1987 Amendment: In (1), in third sentence, substituted "money" for "moneys appropriated or" and inserted "K-12" and inserted fourth sentence concerning disbursal of money; in (2), in two places before "vocational-technical", deleted "postsecondary"; and made minor changes in phraseology.

20-16-202. Sources of financing for vocational-technical center budgets — distribution of funds. (1) The total of the budgets approved by the board of regents shall constitute the total maximum approved statewide vocational-technical center system budget which shall be financed as follows:

(a) The primary source of financing is to be those funds specifically designated by legislative enactment or referendum by the people for financing vocational-technical education in Montana.

(b) The board of county commissioners of each county in which a designated vocational-technical center is located shall levy a tax in each calendar year of 1 ½ mills on the dollar of all taxable property, real and personal, within the county to raise the amount appropriated by the legislature for the support and maintenance of the vocational-technical center system. The tax is to be effective for property tax years beginning on or after January 1, 1987. It is the intent of this subsection (1)(b) that the county commissioners shall levy this tax for fiscal year 1988 operation of the vocational-technical system and thereafter.

(c) Designated vocational-technical centers shall be eligible to receive such funds from the federal government as the board of regents may provide pursuant to applicable acts of congress.

(2) The board of regents shall direct the distribution of the funds specified in subsection (1) on the basis of the budgets approved by the board of regents. The funds earned by the mill levy specified in subsection (1)(b) shall be credited to the vocational-technical center account in the unrestricted subfund of the current fund in the state treasury.

History: En. 75-7709 by Sec. 412, Ch. 5, L. 1971; amd. Sec. 1, Ch. 226, L. 1973; (amd. Sec. 10, Ch. 434, L. 1975 — [unconstitutional, 32 St. Rep. 670]; Sec. 10, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); amd. Sec. 26, Ch. 266, L. 1977; R.C.M. 1947, 75-7709; amd. Sec. 4, Ch. 598, L. 1979; amd. Sec. 1, Ch. 27, Sp. L. June 1986; amd. Sec. 18, Ch. 658, L. 1987; Sec. 20-7-324, MCA 1985; redes. 20-16-202 by Sec. 33, Ch. 658, L. 1987.

Compiler's Comments

1987 Amendment: In (1), in introductory clause, (1)(c), and two places in (2) substituted "board of regents" for "superintendent of public instruction"; throughout section, before "vocational-technical", deleted "postsecondary"; in (1)(b), in first sentence, inserted "to raise the amount appropriated by the legislature" and at end substituted "system" for "located within the county" and inserted second and third sentences concerning tax levy; deleted (1)(d) that read: "(d) The board of trustees of any designated high school district or county high school district where a postsecondary vocational-technical center is located may be required, as a condition for the construction in that district of a postsecondary vocational-technical center, or any part thereof, to furnish up to 50% of the amount of funds required for any such construction. The percentage of construction funds to be furnished by the designated district shall be derived, in whole or in part, from any of the following sources:

(i) the sale of bonds issued by that district (such bonds shall be issued in conformity with the requirements of chapter 9, part 4, of this title in the case of high school and county high school district);

(ii) any other funds available to that district which may be legally and properly applied toward such construction;

(iii) the reasonable value of land, buildings, fixtures, or equipment furnished by that district, subject to the approval of the superintendent of public instruction"; deleted (3) that read: "(3) The superintendent of public instruction shall determine the amount of financing available from these four sources of revenue and may approve budgets for instruction, plant operations and maintenance, equipment, and support. The aggregate amount of the budgets so approved by the superintendent of public instruction for postsecondary vocational-technical centers shall not exceed the moneys determined to be available"; and made minor changes in phraseology.

Cross-References

Limit on expenditures, 17-8-103.

Power to accept gifts, 20-6-601.

Contracts and bonds for joint construction of vocational-technical centers, 20-9-404.

Education trust fund interest earnings account, 90-6-211.

20-16-203. Source of financing for vocational-technical center facility maintenance. The source of funds for maintenance, remodeling, and renovation of vocational-technical center facilities may be either federal funds or state funds specifically appropriated by the legislature and approved by the board of regents, or any combination of these funds.

History: En. Sec. 6, Ch. 598, L. 1979; amd. Sec. 20, Ch. 658, L. 1987; Sec. 20-7-327, MCA 1985; redes. 20-16-203 by Sec. 33, Ch. 658, L. 1987.

Compiler's Comments

1987 Amendment: Before "vocational-technical" deleted "postsecondary", substituted "federal funds" for "local funds", substituted "board of regents" for "superintendent of public instruction", and inserted "or any combination of these funds".

Cross-References

Appropriation bills, Art. V, sec. 11, Mont. Const.

Public school fund, Art. X, sec. 2, Mont. Const.

Public school fund revenue, Art. X, sec. 5, Mont. Const.

Contracts and bonds for joint construction of vocational-technical secondary schools, 20-9-404.

20-16-204. Vocational-technical center funding — nongeneral fund money expended first — reversion of general fund money. (1) The board of regents shall request the establishment of the appropriate accounts for the vocational-technical center system in the state treasury. These accounts shall be established in the appropriate state treasury funds as determined by the department of administration. All money prescribed and received under the provisions of 20-16-202 shall be credited to these accounts. The expenditure of the money deposited in the state treasury shall be made in accordance with procedures established by the department of administration. Such expenditures shall be made under the budget and for the programs approved by the board of regents under the financial administration provisions of this title.

(2) A vocational-technical center shall apply expenditures against nongeneral fund money wherever possible before using state general fund appropriations. All state general fund money appropriated or disbursed to a vocational-technical center which are unexpended at fiscal yearend shall revert to the state general fund.

History: En. 75-7208 by Sec. 347, Ch. 5, L. 1971; R.C.M. 1947, 75-7208; amd. Sec. 1, Ch. 205, L. 1979; amd. Sec. 18, Ch. 598, L. 1979; amd. Sec. 3, Ch. 682, L. 1979; amd. Sec. 19, Ch. 658, L. 1987; Sec. 20-7-325, MCA 1985; redes. 20-16-204 by Sec. 33, Ch. 658, L. 1987.

Compiler's Comments

1987 Amendment: In (1), at beginning, substituted "The board of regents" for "Whenever an approved postsecondary vocational-technical center under the provisions of 20-7-311 is operated within a district, the trustees of such district", after "accounts" inserted "for the vocational-technical center system", and near end substituted "board of regents under" for "superintendent of public instruction under the provisions of 20-7-323 and"; in (2), in two places before "vocational-technical", deleted "postsecondary"; and deleted (3) and (4) that read: "(3) The approval of the postsecondary vocational-technical center budget and subsequent revision or amendment of such budget by the superintendent of public instruction shall constitute the final budget approval.

(4) Whenever the county tax prescribed in 20-7-324(1)(b) is to be used in support of the postsecondary vocational-technical center, the county commissioners are authorized to levy such tax on the county in accordance with the provisions of 20-9-142."

Cross-References

Disposal of unexpended appropriations, 17-7-304.

Contracts and bonds for joint construction of vocational-technical centers, 20-9-404.

20-16-205. Tuition rates. (1) Tuition may be charged to any resident or nonresident of the state of Montana by the director of any vocational-technical center at rates to be determined by the board of regents and the provisions of subsection (3). The board of regents shall prescribe permissible uses for any tuition authorized.

(2) For the purposes of this section the eligibility of a student for resident status shall be determined in the same manner as that prescribed for use by the Montana university system, except that those provisions referring to "high school graduates" or "graduation from high school" shall be considered to refer to a person who has attended school or who was in attendance at a school.

(3) If an additional levy for a center is approved under 20-16-207, the board of regents may charge an additional tuition amount not to exceed $40 a quarter to a student at the center who is a resident of Montana but who is not a property taxpayer of the county or an owner of a vehicle registered within the county where the center is located.

History: En. 75-7713 by Sec. 416, Ch. 5, L. 1971; R.C.M. 1947, 75-7713; amd. Sec. 1, Ch. 223, L. 1979; amd. Sec. 19, Ch. 598, L. 1979; amd. Sec. 21, Ch. 658, L. 1987; Sec. 20-7-332, MCA 1985; redes. 20-16-205 by Sec. 33, Ch. 658, L. 1987.

Compiler's Comments

1987 Amendment: In (1), in first sentence, substituted "director" for "governing board", before "vocational-technical" deleted "postsecondary", and at end inserted "and the provisions of subsection (3)" and in each sentence substituted "board of regents" for "superintendent of public instruction"; and inserted (3).

Cross-References

Free tuition for honorably discharged veterans, 10-2-311.

Fee waiver — children of prisoners of war and persons killed in action, 10-2-312.

Eligibility to be determined by Board of Regents, 10-2-313.

Determination of attendance, 10-2-314.

Definition of resident student, 20-25-501.

Presumptions and rules as to domicile, 20-25-503.

Evidence of domiciliary intent, 20-25-504.

20-16-206. Student fees and disposition of collected fees. (1) Fees for the use of equipment and material used in instruction may be charged by the director of the vocational-technical center. The board of regents shall prescribe the bases and limitations for the charging of such fees.

(2) Fees collected by the vocational-technical center shall be deposited with the state treasurer in the fund designated by the board of regents for the receipt of such fees. The expenditure of the fees shall not be subject to budget limitations and shall be in addition to the program budgets approved by the board of regents.

History: En. 75-7714 by Sec. 417, Ch. 5, L. 1971; R.C.M. 1947, 75-7714; amd. Sec. 20, Ch. 598, L. 1979; amd. Sec. 4, Ch. 682, L. 1979; amd. Sec. 22, Ch. 658, L. 1987; Sec. 20-7-333, MCA 1985; redes. 20-16-206 by Sec. 33, Ch. 658, L. 1987.

Compiler's Comments

1987 Amendment: In (1) substituted "director" for "trustees or other governing board"; and throughout section, before "vocational-technical", deleted "postsecondary" and substituted "board of regents" for "superintendent of public instruction".

Cross-References

Fee waiver — children of prisoners of war and persons killed in action, 10-2-312.

20-16-207. Additional levy by school district — procedure. (1) For school fiscal years 1988 and 1989, the trustees of a school district that operated a vocational-technical center prior to July 1, 1987, may propose to the board of regents that a budget for salaries, benefits, operations, and equipment be adopted for the center in excess of the amount appropriated by the legislature.

(2) If the board of regents approves of a budget for a center in excess of the appropriated amount, the trustees of the district that operated the center shall submit to the qualified electors of the district, pursuant to 20-20-301 and in the manner prescribed by 20-9-353, a proposition for an additional levy for the additional funding. When the proposition is presented to the electorate, the proposition must be presented as a separate issue on the ballot.

(3) If a proposition for an additional levy for a vocational-technical center is approved by the electorate, the board of regents shall request the establishment of an individual account for the center in the state treasury as determined by the department of administration. The funds in each center account are appropriated for approved expenditures for the center. After July 1, 1989, any unexpended funding in a center account must be returned to the school district that requested the additional funding.

(4) For school fiscal year 1988, if the trustees of a school district that operated a vocational-technical center prior to July 1, 1987, have adopted a budget in excess of that appropriated by the legislature and have submitted the proposition for an additional levy to the qualified electors of the district and if the electors have approved the proposition as provided for in former 20-7-326, the trustees need not submit the proposition to the electors at an additional election following approval of the budget by the board of regents as provided for in subsection (2).

History: En. Sec. 27, Ch. 658, L. 1987.

CHAPTERS 17 THROUGH 19

RESERVED

CHAPTER 20

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Chapter Cross-References

General election provision, Title 13, ch. 1.

Registration of electors, Title 13, ch. 2.

Voting machines, Title 13, ch. 17.

Election and campaign practices and criminal provisions, Title 13, ch. 35.

Control of campaign practices, Title 13, ch. 37.

Bribery in official and political matters, 45-7-101.

Threats and other improper influence in official and political matters, 45-7-102.

Exemption of electors from arrest, 46-6-102.

Basic political rights, Title 49, ch. 1, part 2.

Part 1

General Provisions

20-20-101. Definition. As used in this title, unless the context clearly indicates otherwise, "school election" means any election conducted by a district or community college district for the purpose of electing trustees, for authorizing taxation, for authorizing the issuance of bonds by an elementary district or a high school district, or for accepting or rejecting any proposition that may be presented to the electorate for decision in accordance with the provisions of this title.

History: En. 75-6401 by Sec. 137, Ch. 5, L. 1971; R.C.M. 1947, 75-6401.

Cross-References

Election of trustees, 20-3-301.

District consolidation, 20-6-203.

Consolidation or annexation election with assumption of bonded indebtedness, 20-6-206.

Consolidation or annexation election without assumption of bonded indebtedness, 20-6-207.

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Transfer of territory from one elementary district to another, 20-6-213.

County high school unification, 20-6-312.

Opening a junior high school when high school district operates a county high school, 20-6-505.

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Selection of school sites, approval election, and lease of state lands, 20-6-621.

Election to authorize the issuance of school district bonds and the methods of introduction, 20-9-421.

Purposes and petition for county high school bonds, 20-9-452.

Purpose and authorization of a building reserve fund by an election, 20-9-502.

Election for school bus transportation purposes, 20-10-132.

Election for transfer of bus depreciation reserve, 20-10-147.

Community college district organization election, 20-15-203, 20-15-208.

Election of trustees after organization of community college district, 20-15-221.

Annexation of territory of districts to community college district, 20-15-231.

20-20-102. Precedence of school election provisions. Except as otherwise provided in this title, school elections shall be conducted and canvassed and the results shall be returned in the same manner as provided for general elections in Title 13. Should there be a conflict between the requirements of Title 13 and the provisions of this title regulating school elections, the provisions of this title shall govern. The superintendent of public instruction may make any necessary rules to clarify Title 13 provisions for use in school elections.

History: En. 75-6402 by Sec. 138, Ch. 5, L. 1971; R.C.M. 1947, 75-6402; amd. Sec. 355, Ch. 571, L. 1979.

20-20-103. Election by ballot. All school elections shall be by ballot.

History: En. 75-6403 by Sec. 139, Ch. 5, L. 1971; R.C.M. 1947, 75-6403.

Cross-References

Mail ballot elections prohibited, 13-19-104.

20-20-104. Forms. The forms necessary for school district elections shall be the same as those prescribed by law or the secretary of state. The superintendent of public instruction may issue prescribed forms for school elections with any necessary revisions of prescribed or statutory forms.

History: En. Sec. 120, Ch. 368, L. 1969; R.C.M. 1947, 23-3702; amd. Sec. 356, Ch. 571, L. 1979.

20-20-105. Regular school election day and special school elections. The first Tuesday of April of each year shall be the regular school election day. Unless otherwise provided by law, special school elections may be conducted at such times as determined by the trustees.

History: En. 75-6404 by Sec. 140, Ch. 5, L. 1971; amd. Sec. 1, Ch. 109, L. 1974; R.C.M. 1947, 75-6404; amd. Sec. 8, Ch. 644, L. 1987.

Compiler's Comments

Contingent 1987 Amendment: In first sentence substituted "The fourth Tuesday of March" for "The first Tuesday of April".

Section 14(1), Ch. 644, L. 1987, provided that the amendment to this section was effective on passage and approval of legislation or adoption of party rules establishing the fourth Tuesday of March as the presidential primary election date or caucus date in any two of the states of Idaho, Washington, or Oregon prior to August 1, 1987. Contingency did not occur.

Cross-References

Annual election, 20-3-304.

20-20-106. Poll hours. (1) The polls for any school election in any district shall open not later than noon. The trustees may order the polls to open earlier, but no earlier than 7 a.m.

(2) If the school election is held on the same day as an election held by a political subdivision under 13-1-104(3) and at the same polling place, the polls shall be opened and closed at the times required for the school election.

(3) If the school election is held on the same day as a general or primary election, the polls shall be opened and closed at the times required for the general or primary election.

(4) Once opened, the polls shall be kept open continuously until 8 p.m., except that whenever all the registered electors at any poll have voted, the poll shall be closed immediately.

History: En. 75-6405 by Sec. 141, Ch. 5, L. 1971; R.C.M. 1947, 75-6405; amd. Sec. 357, Ch. 571, L. 1979; amd. Sec. 2, Ch. 57, L. 1985; amd. Sec. 2, Ch. 372, L. 1987.

Compiler's Comments

1987 Amendment: At end of (1) changed "8 a.m." to "7 a.m.".

Cross-References

Time of opening and closing of polls for all elections, 13-1-106.

20-20-107. Election expenses. All expenses necessarily incurred in the matter of holding school elections shall be paid out of the school funds of the district, except when such expenses are by law to be shared by a community college district for which the district is conducting an election. The trustees may pay the election judges of a school election at a rate not to exceed the prevailing federal minimum wage per hour of service in connection with such election.

History: En. 75-6420 by Sec. 156, Ch. 5, L. 1971; R.C.M. 1947, 75-6420.

Cross-References

Conduct of community college elections, 20-15-208.

Trustee election upon order of trustees, 20-15-221.

20-20-108. Rescheduling of school election canceled due to declaration of state of emergency or disaster. If the governor declares a state of emergency or disaster under Title 10, chapter 3, a school election may be canceled by the county superintendent of schools or, in the absence of the county superintendent, by the state superintendent of public instruction. As soon as convenient after the declaration of a state of emergency or disaster is terminated, the trustees of the district shall set a new date for the election. Notice of such election shall be published for 7 consecutive days in a newspaper of general circulation in the district and posted for 7 days at district polling places. Whenever the best interests of the district would be served, the trustees may give additional notice of the election through appropriate radio and television stations that serve the people of the district.

History: En. Sec. 1, Ch. 153, L. 1981.

Part 2

Calling of and Preparation for School Elections

20-20-201. Calling of school election. (1) At least 40 days before any school election, the trustees of any district shall call such school election by resolution, stating the date and purpose of such election, and shall conduct it in accordance with the procedures required by law, when:

(a) an election must be held on the regular school election day;

(b) in their discretion, the trustees order an election for a purpose authorized by law;

(c) the county superintendent orders an election in accordance with the law authorizing such an order;

(d) the board of public education orders an election in accordance with the law authorizing such an order;

(e) the county commissioners order an election in accordance with the law authorizing such an order;

(f) the board of trustees of a community college district orders an election in accordance with the law authorizing such an order (in which case the community college district shall bear its share of the cost of such election); or

(g) a school election is required by law under any other circumstances.

(2) The resolution calling any school election shall be transmitted to the county election administrator no later than 35 days before the election in order to enable him to close the registration and prepare the lists of registered electors as required by school election laws.

History: En. 75-6406 by Sec. 142, Ch. 5, L. 1971; R.C.M. 1947, 75-6406; amd. Sec. 358, Ch. 571, L. 1979.

Cross-References

Election administrator, 13-1-301.

Mail ballot elections prohibited, 13-19-104.

Conduct of elections, 20-3-306.

District consolidation, 20-6-203.

Elementary district annexation, 20-6-205.

Joint elementary district dissolution, 20-6-211.

County high school unification, 20-6-312.

Opening a junior high school when high school district operates a county high school, 20-6-505.

Trustees' authority to acquire and dispose of sites and buildings, 20-6-603.

Selection of school sites, approval election, and lease of state lands, 20-6-621.

Election to authorize issuance of school district bonds, 20-9-421.

Purpose and authorization of a building reserve fund by an election, 20-9-502.

Joint interstate school agreements, 20-9-705.

Duties of County Transportation Committee, 20-10-132.

20-20-202. Time limitation for conduct of election. Whenever the trustees of any district receive an order to call an election, they shall conduct such election any time within 60 days after the date of the order unless the law or order otherwise regulates the day or timing of such election.

History: En. 75-6407 by Sec. 143, Ch. 5, L. 1971; R.C.M. 1947, 75-6407.

20-20-203. Resolution for poll hours, polling places, and judges. (1) At the trustee meeting when a school election is called, the trustees shall:

(a) except as provided in 20-20-106(3), establish the time at which the polls are to open if in their discretion they determine that the polls shall be open before noon;

(b) establish the polling places for such election, using the established polling places for general elections within the district wherever possible;

(c) appoint, from among the qualified electors of the district, at least three judges for each polling place for such election and notify each judge of such appointment not less than 10 days before the election.

(2) There shall be one polling place in each district unless the trustees establish additional polling places. If more than one polling place is established, the trustees shall define the boundaries for each polling place, and

such trustee-defined polling place boundaries shall be coterminous with county precinct boundaries existing within a district. If the site of a polling place is changed from the polling place site used for the last preceding school election, special reference to the changed site of the polling place shall be included in the notice for such election.

History: En. 75-6408 by Sec. 144, Ch. 5, L. 1971; R.C.M. 1947, 75-6408; amd. Sec. 359, Ch. 571, L. 1979; amd. Sec. 3, Ch. 57, L. 1985.

Cross-References

Election precincts, Title 13, ch. 3.

Designation of polling place, 13-3-105.

Election judges, Title 13, ch. 4.

20-20-204. Election notice. (1) (a) When the trustees of any district call a school election, they shall give notice of the election not less than 20 days or more than 30 days before the day of the election by:

(i) publication of the notice in a newspaper of general circulation in the district; or

(ii) posting notices in three public places in the district, provided that in incorporated cities and towns at least one notice shall be posted at a public place in each ward or precinct.

(b) Whenever, in the judgment of the trustees, the best interest of the district will be served by the supplemental publication of the school election notice in a radio or television broadcast, the trustees may cause such notification to be made.

(2) The notice of a school election, unless otherwise required by law, shall specify:

(a) the date and polling places of the election;

(b) the hours the polling places will be open;

(c) each proposition to be considered by the electorate;

(d) if there are trustees to be elected, the number of positions subject to election and the length of term of each position; and

(e) where and how absentee ballots may be obtained.

(3) If more than one proposition is to be considered at the same school election, each proposition must be set apart and separately identified in the same notice or published in separate notices.

History: En. 75-6409 by Sec. 145, Ch. 5, L. 1971; R.C.M. 1947, 75-6409; amd. Sec. 360, Ch. 571, L. 1979; amd. Sec. 3, Ch. 372, L. 1987.

Compiler's Comments

1987 Amendment: Inserted (1)(a)(i); in (1)(b), after "notice in", deleted "a newspaper or by"; and made minor changes in phraseology.

Cross-References

Supplemental publication of notice by radio or television, 2-3-105 through 2-3-107.

Notice of school bond election by separate purpose, 20-9-427.

Part 3

Qualification and Registration of Electors

20-20-301. Qualifications of elector. An individual is entitled to vote at school elections if he has the qualifications set forth in 13-1-111 and is a resident of the school district or, in a school district that has been apportioned into single-member trustee districts according to 20-3-337, a resident of the trustee district.

History: En. 75-6410 by Sec. 146, Ch. 5, L. 1971; amd. Sec. 2, Ch. 83, L. 1971; amd. Sec. 1, Ch. 118, L. 1971; amd. Sec. 4, Ch. 91, L. 1973; amd. Sec. 31, Ch. 100, L. 1973; amd. Sec.

10, Ch. 266, L. 1977; R.C.M. 1947, 75-6410; amd. Sec. 361, Ch. 571, L. 1979; amd. Sec. 6, Ch. 539, L. 1987.

Compiler's Comments

1987 Amendment: At end added clause concerning single-member districts.

Cross-References

Qualifications of electors, Art. IV, sec. 2, Mont. Const.

Rules for determining residence, 1-1-215, 13-1-112, 13-1-113.

20-20-302. Repealed. Sec. 1, Ch. 208, L. 1983.

History: En. Sec. 1, Ch. 98, L. 1923; amd. Sec. 1, Ch. 47, L. 1929; re-en. Sec. 5199.1, R.C.M. 1935; amd. Sec. 1, Ch. 126, L. 1959; R.C.M. 1947, 84-4711(part).

20-20-303. Electror challenges. (1) An elector may challenge the qualifications of another elector under the provisions of 13-2-404 and 13-13-301(1). Any person offering to vote in a school election may be challenged by any elector of the district on any of the grounds for challenge established in 13-13-301(2). The challenge shall be determined in the same manner, using the same oath as provided in Title 13, chapter 13, part 3.

(2) Any person who has been challenged under any of the provisions of this section and who swears or affirms falsely before any school election judge is guilty of false swearing and is punishable as provided in 45-7-202.

History: En. 75-6412 by Sec. 148, Ch. 5, L. 1971; amd. Sec. 3, Ch. 83, L. 1971; amd. Sec. 5, Ch. 91, L. 1973; amd. Sec. 11, Ch. 266, L. 1977; R.C.M. 1947, 75-6412.

20-20-304 through 20-20-310 reserved.

20-20-311. Closure of registration. Registration for school elections shall close for 30 days before any school election, but it shall not be necessary to publish any notice of such closing of registration.

History: En. 75-6413 by Sec. 149, Ch. 5, L. 1971; R.C.M. 1947, 75-6413.

Cross-References

Registration of electors, Title 13, ch. 2.

20-20-312. Listing of registered electors. After closing registration, the county election administrator shall prepare a list of registered electors for each polling place established by the trustees. The list for each polling place shall be prepared in the format of a precinct register book.

History: En. 75-6414 by Sec. 150, Ch. 5, L. 1971; amd. Sec. 4, Ch. 83, L. 1971; R.C.M. 1947, 75-6414; amd. Sec. 362, Ch. 571, L. 1979.

Cross-References

Local election administration, Title 13, ch. 1, part 3.

20-20-313. Delivery and charge for lists of registered electors. Before the day of the election, the election administrator shall deliver a certified copy of the lists of registered electors for each polling place to the district. The district shall deliver them to the election judges prior to the opening of the polls. The district shall reimburse the county for the actual costs of preparing the lists of registered electors.

History: En. 75-6415 by Sec. 151, Ch. 5, L. 1971; R.C.M. 1947, 75-6415; amd. Sec. 363, Ch. 571, L. 1979.

Cross-References

Local election administration, Title 13, ch. 1, part 3.

Part 4

Election Procedure

20-20-401. Trustees' election duties — ballot certification. (1) The trustees are the general supervisors of school elections unless the trustees request and the county election administrator agrees to conduct a school election under 20-20-417.

(2) Not less than 15 days before an election, the clerk of the district shall prepare a certified list of the names of all candidates entitled to be on the ballot and the official wording for each ballot issue. The clerk shall arrange for printing the ballots. Ballots for absentee voting must be printed and available at least 11 days prior to the election. Names of candidates on school election ballots need not be rotated.

(3) Before the opening of the polls, the trustees shall cause each polling place to be supplied with the ballots and supplies necessary to conduct the election.

History: En. 75-6418 by Sec. 154, Ch. 5, L. 1971; R.C.M. 1947, 75-6418; amd. Sec. 364, Ch. 571, L. 1979; amd. Sec. 2, Ch. 481, L. 1983; amd. Sec. 4, Ch. 372, L. 1987.

Compiler's Comments

1987 Amendment: In (2) inserted third sentence concerning absentee ballots; and deleted former (3) that read: "(3) The trustees are authorized to and shall administer oaths to election judges."

Cross-References

Election judges, Title 13, ch. 4.
Election supplies and ballots, Title 13, ch. 12.
Oath of office, 20-1-202.

20-20-402. Clerk of election judges and appointment for absent judge. Before conducting the school election and on the day of the election, the judges shall designate one of their number to act as clerk of such election. If any of the judges appointed by the trustees are not present at the time for the opening of the poll, the electors present at that time may appoint a qualified elector for such election to act in the place of the absent judge.

History: En. 75-6419 by Sec. 155, Ch. 5, L. 1971; R.C.M. 1947, 75-6419.

Cross-References

Election judges, Title 13, ch. 4.

20-20-403 through 20-20-409 reserved.

20-20-410. Oath of judges. Before votes are cast, the school election judges shall take and subscribe the official oath prescribed by the constitution. The election judges may administer the oath to each other.

History: En. Sec. 5, Ch. 372, L. 1987.

20-20-411. Conduct of election. Election judges shall conduct school elections in a manner that ensures a fair and unbiased determination of the matters put before the electorate and see that each elector has an adequate opportunity to cast his vote.

History: En. 75-6421 by Sec. 157, Ch. 5, L. 1971; R.C.M. 1947, 75-6421; amd. Sec. 365, Ch. 571, L. 1979.

Cross-References

Election procedure, Title 13, ch. 13.

20-20-412 through 20-20-414. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments
Histories of Repealed Sections:
20-20-412. En. 75-6416 by Sec. 152, Ch. 5, L. 1971; R.C.M. 1947, 75-6416(part).
20-20-413. En. 75-6422 by Sec. 158, Ch. 5, L. 1971; R.C.M. 1947, 75-6422(1), (2).
20-20-414. En. 75-6422 by Sec. 158, Ch. 5, L. 1971; R.C.M. 1947, 75-6422(3) thru (6).

20-20-415. Trustees to canvass votes. At the first regular or special meeting of the trustees conducted after the receipt of the certified tally sheets of any school election from all the polls of the district, the trustees shall canvass the vote.

History: En. 75-6423 by Sec. 159, Ch. 5, L. 1971; R.C.M. 1947, 75-6423(part); amd. Sec. 366, Ch. 571, L. 1979.

Cross-References
Canvassing, returns, and certificates, Title 13, ch. 15.
Meetings and quorum, 20-3-322.
School bond elections — canvassing, 20-9-428.

20-20-416. Certificate of election. After the canvass of the total votes cast, the trustees shall issue a certificate of election. In the case of a trustee election, the certificate shall be issued to the elected trustee and the county superintendent designating the term of the trustee position to which he has been elected. In the case of an election on a proposition, the trustees shall issue a certificate specifying the outcome of the election. The certificate shall be issued to the official or public body which ordered the election within 15 days after the election. When the election has been ordered by resolution of the trustees, the canvassed results shall be published immediately in a newspaper that will give notice to the largest number of people of the district.

History: En. 75-6423 by Sec. 159, Ch. 5, L. 1971; R.C.M. 1947, 75-6423(part); amd. Sec. 367, Ch. 571, L. 1979.

Cross-References
Canvassing, returns, and certificates, Title 13, ch. 15.
Election of trustees, 20-3-301.
Qualification and oath of person receiving certificate, 20-3-307.

20-20-417. Request for county election administrator to conduct election. (1) By June 1 of each year, the trustees of any district may request the county election administrator to conduct certain school elections during the ensuing school fiscal year.

(2) Whenever the county election administrator agrees to conduct a school election, he shall:

(a) perform the duties imposed on the trustees and the clerk of the district for school elections in 20-20-203, 20-20-313, and 20-20-401;

(b) conduct the election in accordance with the provisions of Title 13, chapters 13 and 15; and

(c) deliver to the trustees, for the purpose of canvassing the vote, the certified tally sheets and other items as provided in 13-15-301.

(3) Whenever the trustees request the county election administrator to conduct a school election, the school district shall pay the costs of the election as provided in 13-1-302.

History: En. Sec. 1, Ch. 481, L. 1983.

Cross-References
County election administrator, 13-1-301.

20-20-418 through 20-20-420 reserved.

20-20-421. Voting machines and electronic voting systems. Whenever voting machines or electronic voting systems are available to a district, such voting devices may be used for a school election. Any district that uses a voting machine or an electronic voting system shall do so in accordance with the provisions of chapter 17 of Title 13. In construing the provisions of that chapter, the "county governing body" and the "election administrator" shall, for the purposes of this section, be considered to refer to trustees and "county" shall be considered to refer to district.

History: En. 75-6417 by Sec. 153, Ch. 5, L. 1971; R.C.M. 1947, 75-6417; amd. Sec. 368, Ch. 571, L. 1979; amd. Sec. 77, Ch. 575, L. 1981.

CHAPTERS 21 THROUGH 24

RESERVED

CHAPTER 25

UNIVERSITY SYSTEM

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Chapter Cross-References

Educational goals and duties, Art. X, sec. 1, Mont. Const.

Board of Regents of Higher Education created, Art. X, sec. 9, Mont. Const.; 2-15-1505.

Part 1

University System — General

20-25-101. Antidiscrimination. The Montana university system shall instruct men and women on equal terms.

History: En. 75-8401 by Sec. 1, Ch. 2, L. 1971; R.C.M. 1947, 75-8401.

Cross-References

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

20-25-102. Prohibition against use of name of system. (1) The state has the exclusive right to the name "the Montana university system".

(2) No other institution of learning or corporation may use the name "the Montana university system" or similar name.

(3) The attorney general shall bring an action in the name of the state against any person, association, or corporation using the same or similar name.

(4) The penalty for violation of this section shall be the dissolution of the corporation and a fine in a sum not exceeding $500 or less than $100.

History: En. 75-8404 by Sec. 4, Ch. 2, L. 1971; amd. Sec. 31, Ch. 266, L. 1977; R.C.M. 1947, 75-8404.

20-25-103. Authority to accept gifts. On behalf of the state, the regents may accept all gifts or grants of any kind for the use of any of the units of the university system. Gifts or grants subject to specific provisions shall be accepted and used subject to the terms of the gift or grant.

History: En. 75-8429 by Sec. 29, Ch. 2, L. 1971; R.C.M. 1947, 75-8429.

20-25-104. Supplementary conservation education in university system. (1) To supplement the broad conservation program in the elementary and secondary schools, the units of the university system shall make available to all students in teacher preparatory courses basic instruction in conservation education.

(2) The units at Bozeman and Missoula shall include instruction in conservation in their community or public service programs.

History: En. 75-8803 by Sec. 59, Ch. 2, L. 1971; R.C.M. 1947, 75-8803.

20-25-105. Repealed. Sec. 8, Ch. 21, L. 1985.

History: En. 75-8804 by Sec. 60, Ch. 2, L. 1971; R.C.M. 1947, 75-8804.

20-25-106. Repealed. Sec. 4, Ch. 428, L. 1983.

History: En. 75-8805 by Sec. 61, Ch. 2, L. 1971; R.C.M. 1947, 75-8805.

20-25-107. Regulation of award of degrees — penalty. (1) No person, corporation, association, or institution shall issue any degree or such similar literary honors as are usually granted by universities or colleges without the prior approval of the regents of the adequacy of the course of study.

(2) This section does not apply to any educational institution accredited by an educational accrediting association whose accrediting is found by the regents to be generally recognized by state and other universities in the United States.

(3) Violation of this section is a misdemeanor.

History: En. 75-8502 by Sec. 31, Ch. 2, L. 1971; R.C.M. 1947, 75-8502.

Cross-References

Penalty for violation of school laws, 20-1-207.

Community college not to grant baccalaureate degree, 20-15-108.

Penalty for misdemeanor when none specified, 46-18-212.

20-25-108. Research programs — powers of units. (1) The units of the system are authorized, singly or in cooperation, to engage in research and development programs with the prior approval of the regents.

(2) Such programs may be conducted by any department of a unit or any organization established to assist the unit. A unit or organization may:

(a) contract with private organizations, companies, firms, or individuals relative to research programs;

(b) conduct research programs with the penal, corrective, or custodial institutions of Montana and engage the voluntary participation of the inmates with the prior approval of the governing board of the institution;

(c) accept contributions, grants, or gifts from private organizations, companies, firms, individuals, governmental agencies or departments for research programs;

(d) make agreements or cooperative undertakings with private organizations, companies, firms, individuals, governmental agencies or departments for research programs;

(e) match the funds of private organizations, companies, firms, individuals, governmental agencies or departments with available funds for research programs;

(f) accumulate, invest, and expend the funds and proceeds from research programs;

(g) acquire real and personal property reasonably required for research programs;

(h) not divert funds, proceeds, or real and personal property from the research programs; and

(i) not charge or obligate the state of Montana or the general funds or a unit or agency.

(3) The legislature declares a public need for scientific research in the units of the system to promote the general welfare and to provide an adequate defense for the United States.

History: En. 75-8801 by Sec. 57, Ch. 2, L. 1971; amd. Sec. 10, Ch. 343, L. 1977; R.C.M. 1947, 75-8801.

Cross-References

Authority for institution inmates to participate, 53-30-202.

Contracts and agreements for research by state agencies, 90-1-107.

Part 2

University Units

20-25-201. Units constituting university system. The Montana university system is composed of the following units, each designated by its legal name:

(1) University of Montana, located at Missoula;
(2) Montana state university, located at Bozeman;
(3) Montana college of mineral science and technology, located at Butte;
(4) Western Montana college, located at Dillon;
(5) Eastern Montana college, located at Billings; and
(6) Northern Montana college, located at Havre.

History: En. 75-8403 by Sec. 3, Ch. 2, L. 1971; R.C.M. 1947, 75-8403.

20-25-202 through 20-25-204 reserved.

20-25-205. Purpose of university — law and forestry schools. (1) The university of Montana shall have for its purpose instruction in all the departments of science, in literature, in the arts, and in industrial and professional education.

(2) A law school is established at the university of Montana.

(3) A forestry school is established at the university of Montana.

History: **En. 75-8405 by Sec. 5, Ch. 2, L. 1971; R.C.M. 1947, 75-8405.**

Cross-References

Administrative rules distributed to university law library, 2-4-313.

Supreme Court opinions distributed to university law library, 3-2-604.

Justices of the Peace orientation course to be held at law school, 3-10-203.

20-25-206. Departments and courses of the university of Montana. (1) The departments of the university are:

(a) a preparatory department, which may be dissolved as the regents deem wise, containing courses designed to prepare a student for the regular department;

(b) a department of literature, science, and the arts, offering courses which shall include:

(i) mathematics, physical and natural sciences, with their application to the industrial arts;

(ii) languages, literature, history, and philosophy; and

(iii) other courses at the regents' discretion; and

(c) professional and technical departments.

(2) When the income of the university allows and demands require, the courses may form departments with a faculty and an appropriate title.

History: **En. 75-8406 by Sec. 6, Ch. 2, L. 1971; R.C.M. 1947, 75-8406.**

20-25-207 through 20-25-210 reserved.

20-25-211. Montana college of mineral science and technology — purpose — fees for assays. (1) The Montana college of mineral science and technology has for its purpose instruction and education in chemistry, metallurgy, mineralogy, geology, mining, milling, engineering, mathematics, mechanics and drawing, and the laws of the United States and Montana relating to mining.

(2) A department designated as "the Montana state bureau of mines and geology", which shall be under the direction of the regents, is established at the college.

(3) The president of Montana college of mineral science and technology may charge and collect reasonable fees for any assays and analyses made by the college.

(4) The president shall keep an account of such fees and pay them monthly to the treasurer for deposit to the college fund.

History: **En. Secs. 7, 49, Ch. 2, L. 1971; R.C.M. 1947, 75-8407, 75-8608.**

20-25-212. Bureau of mines and geology — purpose. The bureau of mines and geology shall:

(1) compile and publish statistics relative to Montana geology, mining, milling, and metallurgy;

(2) collect:

(a) typical geological and mineral specimens;

(b) samples of products;

(c) photographs, models, and drawings of appliances used in the mines, mills, and smelters of Montana; and

(d) a library and a bibliography of literature relative to the progress of geology, mining, milling, and smelting in Montana;

(3) study the geological formations of Montana, with special reference to their economic mineral resources and ground water;

(4) examine the topography and physical features of Montana relative to their bearing upon the occupation of the people;

(5) study the mining, milling, and smelting in Montana relative to their improvement;

(6) publish bulletins and reports of a general and detailed description of the natural resources, geology, mines, mills, and reduction plants of Montana;

(7) make qualitative examinations of rocks and mineral samples;

(8) consider scientific and economic problems the regents consider valuable to the people of Montana;

(9) communicate special information of Montana geology, mining, and metallurgy;

(10) cooperate with:

(a) departments of the system;

(b) the state mine inspector;

(c) departments of the state;

(d) the United States geological survey; and

(e) the United States bureau of mines;

(11) make examinations of state land regarding its geology and mineral value at the request of the department of state lands and make investments. These services are limited to the time available for such work after all other duties of the bureau of mines and geology are served. Written reports shall be made. Travel expenses incurred by the examiner shall be paid as provided for in 2-18-501 through 2-18-503, as amended, by the agency requesting the examination upon the presentation of claims in the ordinary form.

(12) deposit all material collected in the state museums or in the Montana college of mineral science and technology after completed use by the bureau of mines and geology;

(13) distribute duplicates of representative material to the units of the university system to their best educational advantage; and

(14) print the regular and special reports with illustrations and maps and distribute them on direction of the regents.

History: En. 75-8408 by Sec. 8, Ch. 2, L. 1971; amd. Sec. 17, Ch. 453, L. 1977; R.C.M. 1947, 75-8408.

Cross-References

Membership on Board of Water Well Contractors, 2-15-3307.

Testing of coal production, 15-35-106.

Drilling data available to bureau representative, 82-11-126.

20-25-213. Bureau director and assistants — duties. The director and assistants of the bureau of mines and geology shall:

(1) take an oath to perform all required services;

(2) guard all confidential information accumulated in their work;

(3) refrain from pecuniary speculation or remunerative private work based upon knowledge of a commercial or economic nature acquired through their services until the knowledge is published and submitted to the people of Montana; and

(4) turn in to the bureau of mines and geology, as state property, all correspondence, notes, illustrations, and other accumulated data.

History: **En. 75-8409 by Sec. 9, Ch. 2, L. 1971; R.C.M. 1947, 75-8409.**

Cross-References

Oath of office, 20-1-202.

20-25-214 through 20-25-220 reserved.

20-25-221. Montana state university — designation and purpose. (1) The land-grant university for the state of Montana, designated as "Montana state university", is established at Bozeman under the provisions of the Morrill Act of 1862.

(2) Montana state university shall be a comprehensive institution carrying out programs of research and public service and offering instruction in the sciences, literature, and arts, including military science, as well as professional programs in agriculture, engineering, and other fields as may be prescribed by the regents.

History: **En. 75-8410 by Sec. 10, Ch. 2, L. 1971; R.C.M. 1947, 75-8410.**

20-25-222. Agricultural experiment station — establishment and purpose. (1) There is established at the state university at Bozeman and under its direction an agricultural experiment station, by virtue of the Hatch Act approved by congress on March 2, 1887. The provisions, donations, and benefits contained in that act and all acts supplementary thereto or amendatory thereof are accepted and adopted by the state of Montana.

(2) The purpose of the agricultural experiment station shall be to conduct and promote studies, scientific investigations, and experiments relating to agriculture, natural resources, and rural life and to diffuse information thereby acquired among the people of Montana.

(3) The agricultural experiment station shall include, in addition to the central location at Bozeman, the designated research centers and other affiliated testing and research facilities.

History: **En. 75-8411 by Sec. 11, Ch. 2, L. 1971; amd. Sec. 1, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.**

Cross-References

Experiment station defined, 20-1-101.

Advice to Department of Highways regarding seeding, 60-2-208.

Duty of Department of Agriculture to cooperate with station, 80-1-102.

Funds for experiment station, 80-10-104.

20-25-223. Director of agricultural experiment station — duties. The director shall have the immediate direction, management, and control of the agricultural experiment station, subject to the general supervision, direction, and control of the regents and the president of the state university.

History: **En. Sec. 3, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.1.**

Cross-References

Membership appointment to Fertilizer Advisory Committee, 2-15-1516.

Duty to meet with Fertilizer Advisory Committee, 80-10-106.

20-25-224. Agricultural research centers. (1) The following agricultural research centers are established as a part of the agricultural experiment station:

(a) the central agricultural research center, located near Moccasin;
(b) the western agricultural research center, located near Corvallis;
(c) the northern agricultural research center, located near Havre;
(d) the southern agricultural research center, located near Huntley;
(e) the northwestern agricultural research center, located near Kalispell;
(f) the eastern agricultural research center, located near Sidney.

(2) All research centers shall be under the general supervision of the director of the agricultural experiment station.

History: En. Sec. 4, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.2.

20-25-225. Experimental farms. (1) In accordance with the provisions of the Morrill Act of July 2, 1862, the regents shall make available for the purchase of sites or experimental farms from any funds deposited in the Montana nonexpendable trust fund credited to the state university through provisions of the Morrill Land Act of 1862, known as the agricultural college Morrill permanent fund, a sum not to exceed 10% of the amount of such fund.

(2) The total amount which may be used for purchase of needed lands for sites or experimental farms may not exceed 10% in the aggregate of the total amount which has now or which may accrue to the credit of the agricultural college Morrill permanent trust fund.

(3) No portion of the moneys apportioned from the endowment funds for the purchase of sites or experimental farms shall be applied directly or indirectly to the purchase, erection, preservation, or repair of any building or buildings.

(4) The regents shall approve purchases of sites or experimental farms, which must be essential for the research programs of the state university.

History: En. 75-8606 by Sec. 47, Ch. 2, L. 1971; R.C.M. 1947, 75-8606; amd. Sec. 19, Ch. 281, L. 1983.

20-25-226. Assents to acts of congress. (1) (a) The state of Montana assents to the provisions of an act of congress entitled "An Act to Provide for an Increased Annual Appropriation for Agricultural Experiment Stations and Regulating the Expenditure Thereof", approved March 16, 1906, and consents to receive the benefits thereof in the manner and for the purposes intended and provided in the act.

(b) The agricultural experiment station shall be the beneficiary of the funds in the act and shall use the funds only for the purposes therein provided.

(c) The treasurer of Montana state university may receive all moneys appropriated by the act, to be expended under the supervision of the regents in the manner designated in the act, and shall receive, hold, and account for the funds and make reports to the secretary of agriculture as required by the act.

(2) (a) The state accepts and assents to the terms and provisions of the act of congress approved May 8, 1914, entitled "An Act to Provide for Cooperative Agricultural Extension Work Between the Agricultural Colleges in the Several States Receiving the Benefits of an Act of Congress Approved July Second, Eighteen Hundred and Sixty-two, and of Acts Supplementary Thereto, and the United States Department of Agriculture".

(b) The president of Montana state university may enter into all necessary agreements with the secretary of agriculture of the United States for the receipt and expenditure of all money paid under the provisions of said act.

(c) He may receive and expend such money in accordance with the provisions of said act and any agreements so made.

History: (1)Ap. p. Sec. 44, Ch. 2, L. 1971; Sec. 75-8603, R.C.M. 1947; Ap. p. Sec. 46, Ch. 2, L. 1971; amd. Sec. 9, Ch. 343, L. 1977; Sec. 75-8605, R.C.M. 1947; (2)En. Sec. 45, Ch. 2, L. 1971; Sec. 75-8604, R.C.M. 1947; R.C.M. 1947, 75-8603(1) thru (3), 75-8604, 75-8605(1)(b).

20-25-227. Montana wool laboratory — designation and purpose. (1) There is established as a part of the agricultural experiment station the Montana wool laboratory.

(2) The purpose of the laboratory shall be the carrying on of effective scientific and practical research and testing work to develop as complete and accurate a knowledge of wools as possible.

(3) The wool laboratory shall be under the general direction of the director of the agricultural experiment station.

History: En. Sec. 5, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.3.

20-25-228. Wool laboratory funds and fees. (1) The wool laboratory shall:

(a) cooperate fully with the United States department of agriculture for the benefit of the Montana wool industry; and

(b) keep a complete and comprehensive system of records covering its internal administration, activities, and meetings of its advisory committee and all sampling, testing, and research work.

(2) The wool laboratory may:

(a) receive any moneys which the federal government may make available for the use of the laboratory and pay all such funds to the state treasurer to be deposited in a special trust fund; and

(b) receive donations from individuals for the purposes of the laboratory, which shall also be paid to the state treasurer to be deposited in the special trust fund.

(3) All federal funds which may be provided and all funds which may be received by the laboratory for its use and benefit are hereby appropriated for the Montana wool laboratory.

(4) All moneys collected by the Montana wool laboratory shall be used for the payment of salaries and expenses, including purchase of equipment and supplies, and the erection of necessary buildings.

(5) The laboratory shall charge fees to woolgrowers which will cover actual costs for furnishing specific testing services. Such fees shall not include costs of doing research.

History: En. 75-8607 by Sec. 48, Ch. 2, L. 1971; R.C.M. 1947, 75-8607.

20-25-229. Montana grain and seed laboratory. (1) There is established as a part of the agricultural experiment station the Montana grain and seed laboratory.

(2) The purpose of the laboratory shall be the carrying on of effective scientific and practical research and testing work to develop as complete and accurate a knowledge of grains and seeds as possible.

(3) The laboratory shall be under the general direction of the director of the agricultural experiment station.

History: En. Sec. 6, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.4.

Cross-References

Testing agricultural seeds, 80-5-108 through 80-5-112.

20-25-230. Acceptance of donations. The director, with the consent of the regents, may accept on behalf of the state of Montana, for the use of the agricultural experiment station, donations of real property, money, implements, scientific equipment, building materials, animals, supplies, and any other gifts considered beneficial by the director. Such donations may be accepted from both public and private sources, including the government of the United States.

History: En. Sec. 7, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.5.

20-25-231. Federal grants and cooperative research studies. The director of the agricultural experiment station may take appropriate steps to qualify for and receive grants and other forms of assistance made available by the government of the United States and may enter into agreements with governmental agencies for cooperative research studies.

History: En. Sec. 8, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.6.

Cross-References

Contracts and agreements for research by state agencies, 90-1-107.

20-25-232. Income from sale of products — disposition. Any income received from the sale of agricultural products and services by the agricultural experiment station or by any of the agricultural substations shall be deposited in the state treasury and shall be used to defray the costs of operating the station and substations.

History: En. Sec. 9, Ch. 29, L. 1971; Sec. 75-8411.7, R.C.M. 1947; En. 75-8603 by Sec. 44, Ch. 2, L. 1971; Sec. 75-8603, R.C.M. 1947; R.C.M. 1947, 75-8411.7, 75-8603(4).

20-25-233 through 20-25-240 reserved.

20-25-241. Montana forest and conservation experiment station established. There is hereby established in the university of Montana forestry school a station to be known as the Montana forest and conservation experiment station, which shall be under the direction of the board of regents.

History: En. Sec. 1, Ch. 141, L. 1937; amd. Sec. 25, Ch. 253, L. 1974; R.C.M. 1947, 28-301.

20-25-242. Purpose of station. (1) It is the purpose of this station to:

(a) study the forest and forest land resources of the state to the end that the state and its citizens may attain the highest economic and social benefits from the forest soils within the state and the influences and products flowing therefrom;

(b) study the growth and the utilization of timber with special reference to their improvement and the widening of the markets available to the state;

(c) determine:

(i) the relationship between the forest and water conservation and waterflow regulation;

(ii) the relationship between the forest and pasturage for domestic livestock and wildlife;

(iii) the relationship between the forest and recreation; and

(iv) those other direct and indirect benefits that may be secured by the maintenance of or the establishment of forests or woodlands;

(d) study and develop the establishment of windbreaks, shelterbelts, and woodlots on the farms of the state that moisture may be conserved thereby for the best production of agricultural crops and forage, for the prevention of soil wastage and erosion, to make the farm home more comfortable, and to produce forest material for the use of the farmer and the stockman;

(e) study the findings of other agencies that the information thus obtained may be used to improve the growth, management, and utilization of the timber within the state and to protect it against damage by fire, insects, disease, and other harmful agencies;

(f) collect, compile, and publish statistics relative to Montana forests and forestry and the influences flowing therefrom; prepare and publish bulletins and reports, with the necessary illustrations and maps, that the information collected by the station in forestry and in conservation may be made available for use; and distribute this information or material in such other ways as the board of regents may direct;

(g) collect a library and bibliography of literature pertaining to or useful for the purpose of 20-25-241 through 20-25-245;

(h) study logging, lumbering, and milling operations and other operations dealing with the products of forest soils with special reference to their improvement; investigate and make tests of forest products produced or that may be produced within the state that markets may be improved thereby;

(i) consider such other scientific and economic problems as, in the judgment of the board of regents, are of value to the people of the state;

(j) cooperate with the other departments of the university of Montana, the departments of the state government when mutually beneficial, and with private individuals and agencies and cooperate with the United States government and its branches as a land-grant institution or otherwise in accordance with their regulations;

(k) establish such field experiment stations as in the judgment of the board of regents may be necessary.

(2) The board of regents may accept, for and in behalf of the state of Montana, such gifts of land or other donations as may be made to the state for the purposes of 20-25-241 through 20-25-245.

History: En. Sec. 3, Ch. 141, L. 1937; amd. Sec. 26, Ch. 253, L. 1974; R.C.M. 1947, 28-303.

Cross-References

Conservation districts, Title 76, ch. 15.

20-25-243. Director of station. The dean of the forestry school, whoever shall hold that office from time to time, shall be the director of said Montana forest and conservation experiment station. The board of regents shall have the power and it shall be its duty to appoint or designate such assistants and employees as may be necessary and to fix the compensation of all persons connected with said station.

History: En. Sec. 2, Ch. 141, L. 1937; R.C.M. 1947, 28-302.

20-25-244. Oath of office. The dean of the forestry school, the officers and employees of said station, appointed or assigned, and their assistants shall take an oath to:

(1) perform all the services required of them under 20-25-241 through 20-25-245;

(2) guard carefully all confidential information accumulated in the progress of their work; and

(3) turn in to the station as state property all correspondence, notes, illustrations, and data of any kind accumulated by them in performing the work of the station.

History: En. Sec. 5, Ch. 141, L. 1937; R.C.M. 1947, 28-305.

Cross-References

Constitutional oath of office, Art. III, sec. 3, Mont. Const.

Oath of office, 20-1-202.

20-25-245. Reports — disposition of income. (1) The board of regents may require such regular and special reports to be prepared as it deems necessary. Such regular reports and the special reports and bulletins, with proper illustrations and maps, shall be printed and distributed as the board of regents may direct and as the interests of the state and of science and industry may demand.

(2) Income received by the station shall be deposited in the state treasury and used for the purposes of administering 20-25-241 through 20-25-245.

History: En. Sec. 4, Ch. 141, L. 1937; amd. Sec. 234, Ch. 147, L. 1963; R.C.M. 1947, 28-304.

20-25-246 through 20-25-250 reserved.

20-25-251. Purpose of eastern Montana college. Eastern Montana college has for its primary purpose the instruction and training of teachers for the public schools of Montana.

History: En. 75-8423 by Sec. 23, Ch. 2, L. 1971; R.C.M. 1947, 75-8423.

20-25-252. Donations to eastern Montana college. The regents may accept for and on behalf of eastern Montana college any donations of lands and any other gifts for the use and benefit of the college.

History: En. 75-8425 by Sec. 25, Ch. 2, L. 1971; R.C.M. 1947, 75-8425.

20-25-253. Purpose of western Montana college. Western Montana college has for its primary purpose the instruction and training of teachers for the public schools of Montana.

History: En. 75-8424 by Sec. 24, Ch. 2, L. 1971; R.C.M. 1947, 75-8424.

20-25-254. Donations to western Montana college. The regents may accept for and on behalf of western Montana college any donations of lands and any other gifts for the use and benefit of the college.

History: En. 75-8426 by Sec. 26, Ch. 2, L. 1971; R.C.M. 1947, 75-8426.

20-25-255. Acceptance of public lands. (1) The regents shall receive, in the names of western Montana college and eastern Montana college, all benefits derived from the distribution of lands contemplated in section 17 of an act of congress, approved February 22, 1889, entitled "An Act to Provide for the Division of Dakota Into Two States and to Enable the People of North Dakota, South Dakota, Montana, and Washington to Form Constitutions and State Governments and to be Admitted Into the Union on an Equal Footing With the Original States, and to Make Donations of Public Lands to Such States".

(2) The regents may, in carrying out the provisions of Title 20, pledge one-half of all interest and income derived from said land grant for the payment in whole or in part of notes, bonds, or other obligations issued by the regents for residence halls or other facilities at western Montana college or at eastern Montana college, provided that any such pledge shall be subject to any prior pledge.

History: **En. 75-8427 by Sec. 27, Ch. 2, L. 1971; amd. Sec. 1, Ch. 289, L. 1971; amd. Sec. 8, Ch. 343, L. 1977; R.C.M. 1947, 75-8427.**

20-25-256. Purposes of northern Montana college. Northern Montana college has for its purpose instruction and education in:

(1) the English language, history, literature, mathematics, bookkeeping, moral philosophy, and political, rural, and household economy;

(2) mechanical arts, agricultural chemistry, animal and vegetable anatomy and physiology, and veterinary art;

(3) entomology, geology, and such other natural sciences as may be prescribed by the regents;

(4) agriculture, horticulture, and especially the application of science and the mechanical arts to practical agriculture in the field;

(5) irrigation and use of water for agricultural purposes; and

(6) all that relates to an efficient, modern manual training school.

History: **En. 75-8428 by Sec. 28, Ch. 2, L. 1971; amd. Sec. 2, Ch. 29, L. 1971; R.C.M. 1947, 75-8428.**

Part 3

Administration of University System

Part Cross-References

Cooperative agreements with district weed boards, 7-22-2151.

20-25-301. Regents' powers and duties. The board of regents of higher education shall serve as regents of the Montana university system, shall use and adopt this style in all its dealings therewith, and shall:

(1) have general control and supervision of the units of the Montana university system, which shall be considered for all purposes one university;

(2) adopt rules, not inconsistent with the constitution and the laws of the state, for its own government which are proper and necessary for the execution of the powers and duties conferred upon it by law;

(3) provide, subject to the laws of the state, rules for the government of the system;

(4) grant diplomas and degrees to the graduates of the system upon the recommendation of the faculties and have discretion to confer honorary degrees upon persons other than graduates upon the recommendation of the faculty of such institutions;

(5) keep a record of its proceedings;

(6) have, when not otherwise provided by law, control of all books, records, buildings, grounds, and other property of the system;

(7) receive from the board of land commissioners, other boards, persons, or from the government of the United States all funds, incomes, and other property the system may be entitled to and use and appropriate the property for the specific purpose of the grant or donation;

(8) have general control of all receipts and disbursements of the system;

(9) appoint a president and faculty for each of the institutions of the system, appoint any other necessary officers, agents, and employees, and fix their compensation;

(10) confer upon the executive board of each of the units of the system such authority as may be deemed expedient relating to immediate control and management, other than authority relating to financial matters or the selection of the teachers, employees, and faculty;

(11) confer, at the regents' discretion, upon the president and faculty of each of the units of the system for the best interest of the unit such authority relating to the immediate control and management, other than financial, and the selection of teachers and employees;

(12) prevent unnecessary duplication of courses at the units of the system;

(13) appoint a certified professional geologist or registered mining engineer as the director of the Montana state bureau of mines and geology, who shall be designated the state geologist, and appoint any other necessary assistants and employees and fix their compensation. The regents shall prepare a report to each regular session of the legislature showing the progress and condition of the bureau, including any other necessary or required information.

(14) supervise and control the agricultural experiment station, along with any executive or subordinate board or authority which may be appointed by the governor with the advice and consent of the regents;

(15) adopt a seal bearing on its face the words "Montana university system", which must be affixed to all diplomas and all other papers, instruments, or documents which may require it;

(16) assure an adequate level of security for data and information technology resources, as defined in 2-15-102, within the state university system. In carrying out this responsibility, the board of regents shall, at a minimum, address the responsibilities prescribed in 2-15-114.

History: En. 75-8501 by Sec. 30, Ch. 2, L. 1971; R.C.M. 1947, 75-8501; amd. Sec. 7, Ch. 125, L. 1983; amd. Sec. 5, Ch. 21, L. 1985; (16)En. Sec. 4, Ch. 592, L. 1987.

Compiler's Comments

1987 Codification: The Code Commissioner has codified sec. 4, Ch. 592, L. 1987 as (16).

Cross-References

Rulemaking exempt from Montana Administrative Procedure Act, 2-4-102.

Creation of advisory councils by regents, 2-15-122.

Number and notice of meetings, 20-2-112.

Duty to adopt rules and keep records, 20-2-114.

Duty of Board of Regents to prescribe duties of Commissioner of Higher Education, 20-2-131.

Supervision and coordination of community colleges by Board of Regents, 20-15-103.

Board of Land Commissioners, Title 77, ch. 1, part 2.

20-25-302. Revenue-producing facilities — powers of regents. The regents of the Montana university system may:

(1) purchase, construct, equip, or improve, at any unit of the Montana university system, any of the following types of revenue-producing facilities:

(a) land;

(b) residence halls, dormitories, houses, apartments, and other housing facilities;

(c) dining rooms and halls, restaurants, cafeterias, and other food service facilities;

(d) student union buildings and facilities; and

(e) those other facilities specifically authorized by joint resolution of the legislature;

(2) rent housing facilities and provide food and other services to the students, officers, guests, and employees of the unit at rates that will ensure a reasonable net income over operating expenses and will provide for debt service and reserves and provide for the collection of charges, admissions, and fees for the use of other facilities by students and other persons, which charges, admissions, and fees shall not be deemed to be tuition within the meaning of 20-25-421 and may be collected from any or all students. Student building fees established and in effect on January 1, 1965, which are imposed uniformly upon all students or upon all of a specified class of students in attendance at any unit of the Montana university system shall not be increased without authorization by law unless absolutely necessary and then only to the extent necessary to pay principal or interest due on obligations for which such fees have been or shall be pledged or to maintain reserves securing the payment of such obligations in accordance with the indentures, resolutions, contracts, or other instruments authorizing the issuance of such obligations; provided that at any unit of the Montana university system where the aggregate amount of student building fees in effect on January 1, 1965, was less than $50 per student per academic year, such fees may be increased or additional student building fees may be established to an aggregate amount not exceeding $50 per student per academic year and provided further that additional student building fees may be established or existing student building fees may be increased at the university of Montana at Missoula to an aggregate amount not to exceed $90 per student per academic year. This limitation shall not affect admission or use charges which are made to individual students or others in proportion to their use or occupancy of particular facilities or services and shall not affect any student building fees or other charges which are made pursuant to 20-25-421 for nonresident students.

(3) hold the net income derived from the operation of such facilities and the charges, admissions, and fees so collected and devote the revenues from these sources to debt service and reserves, repairs, replacements, and betterments of the facilities or, so far as such revenues have not been previously obligated for these purposes, to the acquisition, erection, equipping, enlarging, or improvement of additional facilities of the types described in this section;

(4) exercise full control and complete management of such facilities;

(5) rent the facilities to other public or private persons, firms, and corporations for such uses, at such times, for such periods, and at such rates as in the regents' judgment will be consistent with the full use thereof for academic purposes and will add to the revenues available for capital costs and debt service;

(6) do all things necessary to plan for and propose financing, including all necessary loan applications, for:

(a) classroom, laboratory, library, bookstore, and other instructional facilities;

(b) office, recordkeeping, storage, equipment maintenance, and other administrative and operational facilities;

(c) stadiums, fieldhouses, armories, arenas, gymnasiums, swimming pools, and other facilities for athletic and military instruction, exhibitions, games, and contests;

(d) auditoriums, theaters, music halls, and other assembly, theatrical, musical, and entertainment facilities;

(e) hospital, nursing, and other health instruction and service facilities;

(f) nurseries, barns, arenas, pavilions, and other facilities for agricultural and livestock breeding, development, and exhibition;

(g) parking lots and ramps and other parking facilities; and

(h) land needed for such facilities.

History: En. 75-8503 by Sec. 32, Ch. 2, L. 1971; R.C.M. 1947, 75-8503; amd. Sec. 74, Ch. 370, L. 1987.

Compiler's Comments

1987 Amendment: At end of last sentence of (2) substituted "made pursuant to 20-25-421 for nonresident students" for "made to nonresident students as defined in 20-25-421".

Cross-References

When construction authorized by regents, 18-2-102.

Legislative intent regarding construction of student housing, 18-2-103.

20-25-303. Local executive boards — terms and compensation. (1) There is a local executive board for each unit of the system.

(2) (a) Each local executive board shall consist of three members appointed by the governor with the advice and consent of the regents.

(b) The president of each unit shall not be a member of the local executive board.

(c) Two of the members must reside in the county where the unit is located.

(d) The members shall hold office for 3 years beginning the third Monday in April of the year appointed. The term of office of one member shall expire each year.

(e) The members may be removed by the governor or the regents.

(f) The members shall qualify by filing their oath of office with the regents.

(3) All vacancies shall be filled by appointment by the governor and referred to the regents at their first meeting thereafter for confirmation.

(4) Each local executive board shall elect a chairman and appoint a secretary.

(5) The compensation for the members shall be fixed by the regents. It shall not exceed $5 for each day spent in discharging their duties or $125 in any one year for each member. The members shall be reimbursed from the amount appropriated by the legislature for the maintenance and support of the units for all expenses necessarily incurred in discharge of their duties.

History: En. 75-8510 by Sec. 39, Ch. 2, L. 1971; R.C.M. 1947, 75-8510.

20-25-304. Powers of local executive boards. Each local executive board shall:

(1) meet at least once in each quarter and more often if required;

(2) have such immediate direction and control, other than financial, of the affairs of the respective units as may be conferred by the regents.

History: En. 75-8511 by Sec. 40, Ch. 2, L. 1971; amd. Sec. 1, Ch. 351, L. 1971; R.C.M. 1947, 75-8511.

20-25-305. President — powers and duties. Subject to the supervision of the regents, the president of each of the units of the system shall:

(1) have the immediate direction, management, and control of the respective units, including instruction, practical affairs, and scientific investigations;

(2) be the president of the general faculty and of the special faculties of the departments or colleges and the executive head of the unit in all its departments;

(3) have the duties of one of the professorships as long as the interests of the unit require it;

(4) perform the duties of corresponding secretary for the unit;

(5) make an annual report to the regents containing such information as they may request; and

(6) furnish any special report on request of the regents or the legislature.

History: En. 75-8512 by Sec. 41, Ch. 2, L. 1971; R.C.M. 1947, 75-8512.

20-25-306. Designation of holidays by board of regents. (1) The board of regents of higher education may designate the following business days as holidays for all employees of the university system in exchange for the same number of legal holidays enumerated in 1-1-216:

(a) the Friday following Thanksgiving;

(b) the Monday before Christmas Day or New Year's Day if either holiday falls on Tuesday; and

(c) the Friday after Christmas Day or New Year's Day if either holiday falls on Thursday.

(2) A full-time employee who is scheduled for a day off on a day that is designated as a holiday under subsection (1) is entitled to receive another day off with pay during the same pay period of the designated holiday or as scheduled by the employee and his supervisor in addition to the employee's regularly scheduled days off provided the employee is in a pay status on his last regularly scheduled working day immediately before the holiday or on his first regularly scheduled working day immediately after the holiday. Part-time employees receive pay for the designated holiday on a prorated basis according to rules adopted by the department of administration or appropriate administrative officer under 2-18-604.

History: En. Sec. 1, Ch. 340, L. 1981.

20-25-307 through 20-25-310 reserved.

20-25-311. Motor vehicle regulation — parking and operation. The regents of the Montana university system are authorized to make rules at each unit of the university system concerning the parking and operation of motor vehicles upon the grounds, streets, drives, and alleys of each unit.

History: En. Sec. 1, Ch. 398, L. 1971; R.C.M. 1947, 75-8503.2.

Cross-References

Rulemaking by regents not subject to Montana Administrative Procedure Act, 2-4-102.

Drivers' licenses, Title 61, ch. 5.

Responsibility of vehicle users and owners, Title 61, ch. 6.

Traffic regulation, Title 61, ch. 8.

20-25-312. Motor vehicle regulation — enforcement of regulations — appeals. (1) The regents may authorize the president of each unit to:

(a) assess fees for parking on campus subject to the approval of the regents after the regents' consultation with the respective student governing body of the unit;

(b) assess fines in accordance with a published schedule for violations of motor vehicle or parking regulations of each unit in an amount not to exceed $10 per offense;

(c) order the removal of vehicles parked in violation of motor vehicle regulations of each unit at the expense of the violator;

(d) establish a system of appeals at each unit concerning parking violations;

(e) withhold the amount of any unpaid parking fine from any amount owing any student, employee, or faculty member, subject to the provisions of 17-4-105;

(f) prohibit a student from registering if said student has unpaid parking assessments or fines outstanding resulting from on-campus motor vehicle or parking violations within the previous year.

(2) The proceeds from fines and fees collected shall be remitted to the unit at which collections are made to be used for appropriate maintenance and construction of parking facilities and for traffic control.

History: En. Sec. 2, Ch. 398, L. 1971; amd. Sec. 1, Ch. 246, L. 1974; R.C.M. 1947, 75-8503.3; amd. Sec. 1, Ch. 150, L. 1979; amd. Sec. 1, Ch. 91, L. 1985; amd. Sec. 3, Ch. 160, L. 1985.

Cross-References

Authority of regents to authorize construction of facilities, 18-2-102.

20-25-313 through 20-25-320 reserved.

20-25-321. Security department members — appointment — powers. (1) The regents of the Montana university system may appoint one or more persons to be members of security departments at each unit of the university system, as such security departments are constituted on July 1, 1971, or may thereafter be constituted. Persons employed and compensated as members of the security departments when so appointed are peace officers; however, such peace officers shall not exercise their authority except:

(a) upon the campuses of the Montana university system and, for campus-related activities, an area within 1 mile of the exterior boundaries of each thereof; and

(b) in or about other grounds or properties owned, operated, controlled, or administered by the regents or any unit of the Montana university system.

(2) Such officers shall have no power to serve and execute civil processes.

History: En. Sec. 1, Ch. 405, L. 1971; R.C.M. 1947, 75-8513.

Cross-References

"Peace officer" defined, 1-1-207, 45-2-101, 46-1-201.

Enforcement of Montana Alcoholic Beverage Code by peace officers, 16-1-101, 16-6-102 through 16-6-107.

Mutual assistance for peace officers, Title 44, ch. 11.

False alarms or reports to peace officers, 45-7-204, 45-7-205.

Failure to aid police officer, 45-7-304.

Failure to report felony to peace officers, 45-7-305.

Exemption for peace officers from concealed weapon laws, 45-8-317.

Stop and frisk authority of peace officers, 46-5-401.

20-25-322. Traffic citations — agreements with city or county. The president of each unit may in his discretion enter into an agreement with the city or county in which his unit is located to authorize members of the unit's security department to issue citations for parking or moving traffic violations as defined by state or municipal laws which occur within the boundaries of the campus or on streets or alleys contiguous thereto. All such citations shall be considered within the jurisdiction of the appropriate local authority and shall be handled in the same manner as citations issued by peace officers of such local authority.

History: En. Sec. 2, Ch. 405, L. 1971; R.C.M. 1947, 75-8514.

Cross-References

Traffic regulation, Title 61, ch. 8.

Power of local authorities, 61-8-103.

20-25-323. Control and direction of security department. The president of each unit shall have general control and direction of the security department of his unit.

History: En. Sec. 3, Ch. 405, L. 1971; R.C.M. 1947, 75-8515.

20-25-324. Firearms. Security guards who have successfully completed the basic course in law enforcement conducted by the Montana law enforcement academy may carry firearms in accordance with policies established by the board of regents:

(1) between 5 p.m. and 8 a.m.; and

(2) whenever guarding money or other valuables.

History: En. Sec. 4, Ch. 405, L. 1971; R.C.M. 1947, 75-8516; amd. Sec. 1, Ch. 404, L. 1981.

Cross-References

Training standards prescribed by Board of Crime Control, 44-4-301.

Curriculum of Law Enforcement Academy, 44-10-202.

Weapons, Title 45, ch. 8, part 3.

Part 4

Miscellaneous Finance

Part Cross-References

State university funds, Art. X, sec. 10, Mont. Const.

Submission deadline for budget reports, 17-7-112.

Collection of retirement fund contributions, 19-1-825.

20-25-401. Student building fees at Montana state university. The board of regents of the Montana university system is authorized to establish and collect student building fees for all students or for all of any specified class of students in attendance at Montana state university, Bozeman, Montana, in the amount of $9.25 per student for each quarter of the academic year and for each summer session and to pledge the receipts of such fees for the payment of the cost of acquisition, construction, and equipment of physical education, athletic, and recreation facilities at the university or of the principal and interest on revenue bonds to be issued to finance such facilities, in accordance with the provisions of parts 3 and 4 of this chapter. Of the fee so authorized, $3 is included in the student building fees established and in effect at the university on January 1, 1965, and the remainder is authorized as an increase in such fees pursuant to 20-25-302.

History: **En. Sec. 1, Ch. 223, L. 1971; R.C.M. 1947, 75-8503.1.**

Cross-References

Construction contracts, Title 18, ch. 2.

20-25-402. Borrowing by regents. In carrying out the powers provided in 20-25-107, 20-25-301, and 20-25-302, the regents may:

(1) borrow money for any purpose or purposes stated in parts 3 and 4 of this chapter, including, if considered desirable by the regents, the payment of interest on the money borrowed for a facility during the construction thereof and for 1 year thereafter and the creation of a reserve for the payment of bond principal and interest;

(2) make purchases on a time or installment basis;

(3) issue bonds, notes, and other securities, negotiable or otherwise, secured as provided in this section, including bearer bonds with appurtenant interest coupons, which shall be fully negotiable notwithstanding any limitation on the source of payment thereof, or fully registered bonds or bonds registered as to ownership of principal only;

(4) pledge for the payment of the purchase price of any facility or of the principal and interest on bonds, notes, or other securities authorized in this chapter or otherwise obligate:

(a) the net income received from rents, board, or both in housing, food service, and other facilities;

(b) receipts from student building, activity, union, and other special fees prescribed by the regents for all students; and

(c) other income in the form of gifts, bequests, contributions, federal grants of funds, including the proceeds or income from grants of lands or other real or personal property; receipts from athletic and other contests, exhibitions, and performances; and collections of admissions and other charges for the use of facilities, including all use by other persons, firms, and corporations for athletic and other contests, exhibitions, and performances and for the conduct of their business, educational, or governmental functions;

(5) make payments on loans or purchases from any other available income not obligated for those purposes, including receipts from sale of materials, equipment, and fixtures of the facilities or from sales of the facilities themselves, other than land;

(6) secure any bonds authorized hereunder by a trust indenture between the regents and any bank or trust company within or without the state of Montana or by a resolution establishing covenants of the regents with the holders of such bonds relating to:

(a) the construction, operation, use, and insurance of the facilities;

(b) the segregation, expenditure, and audit of accounts of the bond proceeds and of the income pledged;

(c) the establishment and collection of rents, charges, admissions, and fees sufficient to provide net income adequate for prompt payment of principal and interest on bonds and creation and maintenance of reserves for that purpose; and

(d) such other matters as the regents may determine to be necessary or desirable for the security and marketability of the bonds;

(7) issue and sell or exchange bonds, secured as provided in this section, for the refunding of any outstanding bonds or other obligations issued by the regents before or after January 29, 1971, subject to the following provisions:

(a) refunding bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds or may be sold at a price not less than par plus accrued interest. They may be secured by a pledge of the same revenue as the bonds refunded or by a pledge of different or additional revenues received at the same unit of the university. Nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor, except in accordance with the terms of the outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable if the revenues pledged therefor are not sufficient, but not to refund any bonds or interest due which can be paid from revenues then on hand.

(b) refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient or if they are issued to refund before maturity bonds issued before January 1, 1965, for the purpose of releasing revenues required for payment of the outstanding bonds permitting the pledge thereof for the security of other bonds as well as the refunding bonds, subject to the rights of the holders of the outstanding bonds until those bonds are fully paid and redeemed. Except as authorized in the preceding sentence, refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least ⅜ of 1% less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(c) in any case where refunding bonds are issued and sold 6 months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company having its principal place of business within or without the state, which is a member of the federal reserve system and has a combined capital and surplus not less than $1 million and shall be invested in the amount and in securities maturing on the dates and bearing interest at the rates which will be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which the bond may be called for redemption from the proceeds of the refunding bonds and to pay and redeem the principal amount of each bond at maturity or, if prepayable, on that redemption date and any premium required for redemption on that date. The resolution or indenture authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with such escrow funds shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. The securities shall be purchased simultaneously with the delivery of the refunding bonds.

(d) revenues or other funds on hand, in excess of the amount pledged by resolutions or indentures authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment, may be used to pay the expenses incurred by the regents for the purpose of refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents. Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of those bonds and may be invested and disbursed as provided in subsection (7)(c) hereof to the extent consistent with the resolutions or indentures authorizing such outstanding bonds.

(8) sell bonds and sell or exchange refunding bonds issued hereunder in the manner and upon the terms as to maturities, interest rates, and redemption privileges and for the price that the regents determine with the approval of the department of administration.

History: En. 75-8504 by Sec. 33, Ch. 2, L. 1971; amd. Sec. 32, Ch. 266, L. 1977; R.C.M. 1947, 75-8504.

Cross-References

Bond issues, Title 17, ch. 5.

20-25-403. State not obligated. No obligation created under this chapter shall ever become a charge against the state of Montana, and all such obligations, including principal and interest, shall be payable solely from the sources authorized in this chapter.

History: En. 75-8505 by Sec. 34, Ch. 2, L. 1971; R.C.M. 1947, 75-8505.

20-25-404. Revenue-producing facilities considered as one. In creating and discharging obligations under this chapter, all of the revenue-producing facilities at each unit of the Montana university system may be considered as one, but income received at one unit shall not be used to discharge obligations created for facilities at another unit.

History: En. 75-8506 by Sec. 35, Ch. 2, L. 1971; R.C.M. 1947, 75-8506.

Cross-References

Authorization for construction of revenue-producing facilities, 18-2-102.

20-25-405. Restriction on use of state funds. No state funds except those specified in 20-25-402 shall be obligated or used for the purposes of parts 3 and 4 of this chapter unless specifically directed by the legislature.

History: En. 75-8507 by Sec. 36, Ch. 2, L. 1971; R.C.M. 1947, 75-8507.

20-25-406. Previous contracts unimpaired. This chapter shall not impair any contract, indenture, or agreement executed under previous laws.

History: En. 75-8508 by Sec. 37, Ch. 2, L. 1971; R.C.M. 1947, 75-8508.

Cross-References

Impairment of contracts prohibited, Art. II, sec. 31, Mont. Const.

20-25-407. Prior obligations not affected. No provision of this chapter shall affect or impair:

(1) any contract or undertaking or the financing or agreement to finance any contract or undertaking entered into under the provisions of the laws repealed hereby prior to January 18, 1971; and

(2) the issuance of bonds to finance facilities authorized or commenced under the laws repealed hereby prior to January 18, 1971.

History: En. 75-8509 by Sec. 38, Ch. 2, L. 1971; R.C.M. 1947, 75-8509.

Cross-References

Impairment of contracts prohibited, Art. II, sec. 31, Mont. Const.

20-25-408 through 20-25-420 reserved.

20-25-421. Charges for tuition — waiver of nonresident fees. The regents may:

(1) prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction;

(2) waive, at their discretion, nonresident tuition for selected and approved nonresident students, not to exceed at any unit 2% of the full-time equivalent enrollment at that unit during the preceding year; except that when necessary such tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements which provide for the payment, where required, of the student support fee by the reciprocal state;

(3) waive resident tuition for students at least 62 years of age.

History: En. 75-8601 by Sec. 42, Ch. 2, L. 1971; amd. Sec. 1, Ch. 231, L. 1971; amd. Sec. 1, Ch. 286, L. 1971; amd. Sec. 1, Ch. 432, L. 1971; amd. Sec. 1, Ch. 472, L. 1973; amd. Sec. 1, Ch. 171, L. 1974; R.C.M. 1947, 75-8601.

Cross-References

Rules for determining residence, 1-1-215, 20-25-503, 20-25-504.

Free tuition to veterans, 10-2-311 through 10-2-313.

Free tuition to residents of Mountain View School or Pine Hills School, 53-30-213.

20-25-422. Support of university of Montana. (1) For the support and endowment of the university there is annually and perpetually appropriated:

(a) the university fund income and all other sums of money appropriated by law thereto;

(b) all tuition and matriculation fees; and

(c) all contributions derived from public or private bounty.

(2) The entire income of all such funds shall be placed at the disposal of the regents by transfer to its treasurer and shall be kept separate and distinct from all other funds. The income shall be used solely for the support of the colleges and departments of the university or those connected therewith.

(3) All means derived from other public or private bounty shall be exclusively devoted to the specific objects for which they shall have been designated by the donor.

History: En. 75-8602 by Sec. 43, Ch. 2, L. 1971; R.C.M. 1947, 75-8602.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

State university funds inviolate, Art. X, sec. 10, Mont. Const.

Deposits and investments, Title 17, ch. 6.

20-25-423. State tax levy — support of public educational institutions. The legislature shall levy a property tax of not more than 6 mills on the taxable value of all real and personal property each year for 10 years beginning with the year 1979. All revenue from this property tax levy shall be appropriated for the support, maintenance, and improvement of the Montana university system and other public educational institutions subject to board of regents' supervision.

History: En. Sec. 1, Ref. 75, app. Nov. 7, 1978.

Cross-References

Tax levy for the Montana University System, 15-10-105.

20-25-424. Receipt of funds. (1) The treasurer of Montana state university may receive the cash appropriation received from the United States by authority of the act of congress of August 30, 1890, known as the second Morrill Act and the act of congress of March 4, 1907, known as the Nelson Amendment, to be expended by the executive board under the general supervision of the regents only for the purpose for which it was appropriated by congress.

(2) On or before December 1 of each year, the state university shall make detailed reports of the amounts received and disbursed under the provisions of the acts of congress of August 30, 1890, March 16, 1906, and March 4, 1907, to the secretaries of agriculture and interior of the United States, as required by the acts of congress.

History: En. 75-8605 by Sec. 46, Ch. 2, L. 1971; amd. Sec. 9, Ch. 343, L. 1977; R.C.M. 1947, 75-8605(1)(a), (2); amd. Sec. 6, Ch. 21, L. 1985.

Cross-References

Fiscal year and financial reports, 17-2-110.

20-25-425. Control of expenditures. Pursuant to the terms of appropriations of the legislature or of congress or of gifts of donors, the regents shall determine the need for all expenditures and control the purposes for which all funds shall be spent, subject to the provisions of the law dealing with state purchases.

History: En. 75-8609 by Sec. 50, Ch. 2, L. 1971; amd. Sec. 33, Ch. 266, L. 1977; R.C.M. 1947, 75-8609.

Cross-References

Uniform accounting system and expenditure control requirements, 17-1-102.

Procurement generally, Title 18, ch. 4.

Special purchasing conditions, Title 18, ch. 5.

20-25-426. Donations, grants, gifts. All donations, grants, gifts, or devises shall be made to each unit in its legal name. If made to any officer or board of the unit, they shall be immediately transferred to the unit.

History: En. 75-8610 by Sec. 51, Ch. 2, L. 1971; R.C.M. 1947, 75-8610.

20-25-427 through 20-25-430 reserved.

20-25-431. Construction project at Montana state university and eastern Montana college. (1) Under the provisions of 20-25-302(1) and 18-2-102, the legislature authorizes and consents to a capital construction program at Montana state university, Bozeman, Montana, and eastern Montana college at Billings, Montana, consisting of the acquisition, construction, and equipping of improvements to:

(a) the student union building at Montana state university;

(b) the physical education, athletic, and recreational facilities at Montana state university; and

(c) the physical education, athletic, and recreational facilities at eastern Montana college.

(2) The legislature further consents to the financing of these projects by the board of regents of higher education from gifts, grants, fees and earnings and from the issuance of bonds by the board of regents in accordance with 20-25-402, 20-25-432, and 20-25-433.

History: En. Sec. 1, Ch. 672, L. 1979.

20-25-432. Bonds for construction project — limits. Upon request of the board of regents, the board of examiners is authorized to issue and sell long-range building program bonds upon the conditions and in the manner stated in Title 17, chapter 5, part 4:

(1) in a principal amount not to exceed $4,000,000 for the purpose of financing the costs of the student union building at Montana state university; and

(2) in a principal amount not to exceed $2,500,000 for the purpose of financing the costs of the physical education, athletic, and recreational facilities at Montana state university; and

(3) in a principal amount not to exceed $1,500,000 for the purpose of financing the cost of the physical education, athletic, and recreational facilities at eastern Montana college. In addition to the bonding authorization, $800,000 of federal or private funds is authorized.

History: En. Sec. 2, Ch. 672, L. 1979.

20-25-433. Sale and issuance of bonds — requirements. The sale and issuance of bonds pursuant to 20-25-432 shall be subject to an undertaking by the board of regents to pay the state treasurer for deposit in the debt service fund established pursuant to 17-5-405 amounts sufficient to pay as due the principal of and interest on the bonds. The undertaking by the board of regents may be in the form of a revenue bond or bonds issued by the board of regents to the board of examiners or it may be in the form of an agreement between the board of regents and board of examiners. The payments under any such bonds or agreement shall be from such revenues, fees, and income as are lawfully available to the board of regents to pay the costs of facilities to be financed by the long-range building program bonds hereby authorized or to pay debt service on obligations of the board of regents incurred with respect to such facilities and costs. All agreements or bond arrangements entered into between the board of regents and the department of administration will specifically require the board to maintain debt service payments and the reserve requirement to the long-range building debt service fund. If enrollment reductions should endanger these payments, the regents shall insure continued payments through budget adjustments which include fee increases. With the approval of the board of examiners, any undertaking and the payments thereunder may be subordinated to other obligations of the board of regents upon such terms as the board of examiners considers appropriate. The undertaking of the board of regents shall be solely for the benefit of and enforceable by the state and may not be enforceable by the holders of the long-range building program bonds. The bonds may be issued in one or more series.

History: En. Sec. 3, Ch. 672, L. 1979; amd. Sec. 24, Ch. 298, L. 1983.

20-25-434. Deposit and expenditure of bond proceeds. The proceeds of the bonds authorized by 20-25-431 and 20-25-432 shall be deposited in the capital projects fund created by 17-5-401(2). No construction or related bids shall be let until the bond proceeds are deposited in the capital projects fund. The amount of such proceeds is appropriated from the capital projects fund to the board of regents for the purpose for which the bonds are authorized.

History: En. Sec. 4, Ch. 672, L. 1979; amd. Sec. 25, Ch. 298, L. 1983.

20-25-435 through 20-25-440 reserved.

20-25-441. Lease of university of Montana property for stadium authorized. The board of regents may lease land or land and facilities to a private nonprofit foundation organized to solicit, manage, and administer gift revenues on behalf of the university of Montana for the purpose of renovation or construction by the foundation of a football stadium for the university of Montana. The terms of the lease must be advantageous to the state and must include a guarantee that no commitment of funds to any portion of the initial construction, other than as approved in Senate Joint Resolution No. 14 of the 48th Legislature, is expressed or implied.

History: En. Sec. 1, Ch. 477, L. 1985.

Cross-References

State building leases, Title 18, ch. 3, part 1.

20-25-442. Stadium construction on leased land. The construction of stadium facilities on land leased under 20-25-441 is not subject to the requirements of Title 18, chapter 2, except that:

(1) the department of administration shall execute the provisions of 18-2-103(1)(a) and (1)(e);

(2) the provisions of Title 18, chapter 2, part 4, apply to all labor except donated labor; and

(3) such other provisions of law as may be required to protect the interests of the state of Montana.

History: En. Sec. 2, Ch. 477, L. 1985.

Cross-References

State building leases — awarding contract, 18-3-103.

State building leases — contract provisions, 18-3-104.

20-25-443 through 20-25-450 reserved.

20-25-451. Interest on student activity fees. Interest earned on investment of student activity fees used to support a student government at a unit of the university system may be retained by the student government supported by the fees.

History: En. Sec. 1, Ch. 341, L. 1987.

Part 5

University Students — Qualifications and Rights

Part Cross-References
Student financial assistance, Title 20, ch. 26.
Use of force by parent, guardian, or teacher, 45-3-107.

20-25-501. Definitions. (1) Terms used in this part are defined as follows:

(a) "Domicile" means a person's true, fixed, and permanent home and place of habitation.

(b) "Emancipated minor" means a person under the age of 18 years who supports himself from his own earnings or is married. A person who received more than 25% of the cost of supporting himself from any person other than an agency of the government shall not be considered an emancipated minor.

(c) "Minor" means a male or female person who has not obtained the age of 18 years.

(d) "Qualified person" means a person legally qualified to determine his own domicile.

(e) "Resident student" means:

(i) a student who has been domiciled in Montana for 1 year immediately preceding registration at any unit for any term or session for which resident classification is claimed. Attendance as a full-time student at any college, university, or other institution of higher education shall not alone be sufficient to qualify for residence in Montana.

(ii) any graduate of a Montana high school whose parents, parent, or guardian have resided in Montana at least 1 full year of the 2 years immediately preceding his graduation from high school. Such classification shall continue for not more than 4 academic years if the student remains in continuous attendance at a unit; or

(iii) a member of the armed forces of the United States assigned to and residing in Montana, his spouse, or his dependent children.

(2) In the event the definition of residency or any portion thereof is declared unconstitutional as it is applied to payment of nonresident fees and tuition, the regents of the Montana university system shall have authority to make rules on what constitutes adequate evidence of residency status not inconsistent with such court decisions.

History: En. 75-8702 by Sec. 53, Ch. 2, L. 1971; amd. Sec. 17, Ch. 240, L. 1971; amd. Sec. 1, Ch. 395, L. 1971; amd. Sec. 28, Ch. 94, L. 1973; amd. Sec. 1, Ch. 397, L. 1973; R.C.M. 1947, 75-8702; amd. Sec. 1, Ch. 435, L. 1979.

Cross-References
Rules for determining residence, 1-1-215.
Rulemaking power of regents not subject to Montana Administrative Procedure Act, 2-4-102.

20-25-502. Qualification of students. The university system is open to all people, subject to such uniform regulations as the regents deem proper.

History: En. 75-8701 by Sec. 52, Ch. 2, L. 1971; amd. Sec. 37, Ch. 535, L. 1975; R.C.M. 1947, 75-8701(part).

Cross-References
Nondiscrimination in education, Art. X, sec. 7, Mont. Const.
Illegal discrimination, Title 49, ch. 2.
Governmental code of fair practices, Title 49, ch. 3.

20-25-503. Presumptions and rules as to domicile. (1) Unless the contrary appears to the unit registering authority, it is presumed the domicile of a minor is that:

(a) of the parents or, if one of them is deceased or they do not share the same domicile, of the parent having legal custody or, if neither parent has legal custody, the parent with whom the minor customarily resides; or

(b) of his guardian when the court appointing the guardian certifies that the primary purpose of the appointment is not to qualify the minor as a resident of this state.

(2) A resident student who marries a nonresident does not by that fact alone lose resident status for tuition and fee purposes for a period of 4 years after marriage.

(3) Residence is not lost because of relocation as a member of the armed forces of the United States.

(4) A new domicile is established by a qualified person if he is physically present in Montana with no intention to acquire a domicile outside of Montana.

(5) Domicile is not lost by absence from Montana with no intention to establish a new domicile.

(6) Montana high school graduates are resident students of the system for 4 consecutive years of attendance if:

(a) they apply for admittance to the system within 1 year after graduation; or

(b) their parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom they customarily reside has resided in Montana in one of the 2 years immediately preceding the graduation.

(7) Upon moving to Montana, an adult employed on a full-time basis within the state of Montana may apply for in-state tuition classification for his spouse or any dependent minor child, or both. If such person meets the requirement of full-time employment within the state of Montana and files for the payment of Montana state income taxes or files estimates of those taxes or is subject to withholding of those taxes and renounces his residency in any other state and is not himself in the state primarily as a student, his spouse or any dependent minor child, or both, may at the next registration after qualifying be classified at the in-state rate so long as he continues his Montana domicile. In the administration of this subsection, neither the full-time employee or spouse shall be eligible for in-state tuition classification if the primary purpose for coming to Montana was the education of the employee or spouse.

History: En. 75-8703 by Sec. 54, Ch. 2, L. 1971; amd. Sec. 2, Ch. 395, L. 1971; amd. Sec. 2, Ch. 164, L. 1975; amd. Sec. 34, Ch. 266, L. 1977; R.C.M. 1947, 75-8703; amd. Sec. 2, Ch. 435, L. 1979.

Cross-References

Rules for determining residence, 1-1-215.

20-25-504. Evidence as to domiciliary intent — changes in status. (1) To determine the domicile of a person, the units of the system shall apply the following rules:

(a) Nonpayment of Montana income tax by a person whose income is sufficient to be taxed is highly persuasive evidence of non-Montana domicile.

(b) A person must intend to establish a domicile in Montana.

(2) After registration, a student's classification for tuition and fee purposes remains unchanged in the absence of evidence to the contrary. A written statement of the evidence shall be filed with the registering authority of the unit. Changes in classification shall be in writing signed by the registering authority and shall take effect at the student's next registration.

(3) A minor shall qualify for a change in status only if his parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom he customarily resides or legal guardian or person having legal custody completes the requirements for establishing domicile heretofore set forth.

(4) It is presumed a minor or adult registered as a full-time student at any unit is not qualified for a change in his or his dependent's classification for tuition and fee purposes unless he completes 12 continuous months of residence while not attending a unit of the system or other institution of higher learning or while serving in the armed forces.

(5) Any student whose request for classification as a resident student is denied has the right of appeal to the executive secretary of the Montana university system. Immediately upon rejection and at the request of the student, the registering authority shall forward a copy of his decision and a complete file on the student to the executive secretary. The executive secretary may accept other evidence of residence from either the student, the registering authority, or other interested persons. Within 30 days of the receipt of the decision of the registering authority, the executive secretary shall determine the resident status of the student and shall notify the student and the registering authority of his decision. The executive secretary's decision may be appealed to the regents if the regents agree to entertain such an appeal.

History: En. 75-8704 by Sec. 55, Ch. 2, L. 1971; amd. Sec. 3, Ch. 395, L. 1971; amd. Sec. 3, Ch. 164, L. 1975; R.C.M. 1947, 75-8704.

20-25-505. Indians — nonpayment of fees. (1) Persons of one-fourth Indian blood or more who are bona fide residents of the state of Montana for at least 1 year prior to enrollment in the Montana university system, have completed a 4-year course in an accredited high school or federal Indian school, and show financial need and evidence of studious and industrious habits may enroll in the university system without the payment of fees.

(2) Each unit shall make rules governing the selection of these students.

History: En. 75-8705 by Sec. 56, Ch. 2, L. 1971; amd. Sec. 1, Ch. 350, L. 1971; amd. Sec. 35, Ch. 266, L. 1977; R.C.M. 1947, 75-8705.

Cross-References

Rulemaking power of regents not subject to Montana Administrative Procedure Act, 2-4-102.

20-25-506. Military instruction. All able-bodied students of the university system may receive instruction and discipline in military tactics, the requisite arms for which shall be furnished by the state.

History: En. 75-8701 by Sec. 52, Ch. 2, L. 1971; amd. Sec. 37, Ch. 535, L. 1975; R.C.M. 1947, 75-8701(part).

20-25-507 through 20-25-510 reserved.

20-25-511. Student's right of privacy — legislative intent. It is the legislature's intent that an institution of the university system of Montana is obligated to respect a student's right of privacy. This obligation must be observed by establishing procedures to safeguard the institution's activities which are necessary to protect the health, safety, and privacy of a person's residence and the privacy of his records. Intrusions by peace officers and other officials exercising responsibility for law enforcement must be governed by standards and procedures no less stringent than those applicable to intrusions on private quarters outside the institutions. Further, a student may not be subjected to discrimination in the manner of covert records.

History: En. Sec. 1, Ch. 357, L. 1973; R.C.M. 1947, 75-8706; amd. Sec. 78, Ch. 575, L. 1981.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

"Peace officer" defined, 1-1-207, 45-2-101, 46-1-201.

Public records, Title 2, ch. 6.

Confidential communications by student, 26-1-809.

20-25-512. Contracts waiving right to privacy prohibited. A university or college facility may not require a student to sign any contract which would waive his or her right to privacy and due process of law.

History: En. Sec. 2, Ch. 357, L. 1973; R.C.M. 1947, 75-8707.

Cross-References

Right to privacy, Art. II, sec. 10, Mont. Const.

20-25-513. Written notice required for entry to student's room — emergency. An authorized official of the university or college may not enter the room of a student located at such institution unless he has given the student a notice in writing. An emergency such as a fire or a call for help or where there is probable cause to believe the occupant needs assistance is the only exception to the written notice requirement. In such an emergency, evidence of crime obtained as a result of such emergency entry shall not be admissible in any court of law unless due process of law has been satisfied in obtaining such evidence.

History: En. Sec. 3, Ch. 357, L. 1973; R.C.M. 1947, 75-8708.

Cross-References

Search and seizure, Title 46, ch. 5.

20-25-514. Search in accordance with law. A search or entry by any law enforcement official shall be in accordance with the laws of the city, county, state, and nation.

History: En. Sec. 4, Ch. 357, L. 1973; R.C.M. 1947, 75-8709.

Cross-References

Search and seizure, Title 46, ch. 5.

20-25-515. Release of student records. A university or college shall release a student's academic record only when requested by the student or by a subpoena issued by a court or tribunal of competent jurisdiction. A student's written permission must be obtained before the university or college may release any other kind of record unless such record shall have been subpoenaed by a court or tribunal of competent jurisdiction.

History: En. Sec. 5, Ch. 357, L. 1973; R.C.M. 1947, 75-8710.

Cross-References
Right of privacy, Art. II, sec. 10, Mont. Const.
Public records, Title 2, ch. 6.

20-25-516. Academic records to be kept separate — student's right to examine records. (1) Academic records shall be kept separate from disciplinary and all other records. Academic transcripts shall contain only information of academic nature.

(2) A student shall have the right to examine all written summaries, descriptions, statements, or reports of academic or disciplinary nature which may have been compiled upon him or her.

History: En. Sec. 6, Ch. 357, L. 1973; R.C.M. 1947, 75-8711.

Cross-References
Right of privacy, Art. II, sec. 10, Mont. Const.
Public records, Title 2, ch. 6.

Part 6

Health Education — Drug and Alcohol Instruction

Part Cross-References
Dangerous drugs, Title 45, ch. 9; Title 50, ch. 32.
Alcoholism and drug dependence, Title 53, ch. 24.

20-25-601. Purpose of part — legislative intent. It is the purpose of this part to protect the health and safety of the people of Montana from the menace of drug and alcohol abuse. The legislature intends to require education graduates of any unit of the Montana university system or any private college or private university in Montana to be aware of the problems resulting from drug and alcohol abuse and to be somewhat knowledgeable in dealing with these problems among students.

History: En. Sec. 1, Ch. 396, L. 1971; amd. Sec. 3, Ch. 137, L. 1975; R.C.M. 1947, 75-8901.

20-25-602. Teacher instruction — colleges to offer course. All units of the Montana university system and all private colleges and private universities in Montana that offer any degree in education shall establish a credit course in health education to include drug and alcohol education and abuse by July 1, 1972. The content of the courses established in the Montana university system shall be reviewed and approved by the board of regents of the Montana university system before being offered for study in the units of the Montana university system.

History: En. Sec. 2, Ch. 396, L. 1971; R.C.M. 1947, 75-8902.

20-25-603. Teacher instruction — course required of education students. All units of the Montana university system and all private colleges and universities in Montana that offer any degree in education shall require that any person who receives any degree in education from that unit, private college, or private university after December 31, 1972, must have successfully completed a course in health education to include drug and alcohol education and abuse prior to being awarded his degree.

History: En. Sec. 3, Ch. 396, L. 1971; R.C.M. 1947, 75-8903.

20-25-604. Department in advisory capacity. The department of health and environmental sciences shall act in an advisory capacity in establishing all courses required under this part, and said courses shall be established only after consultation with and advice by the department.

History: En. Sec. 5, Ch. 396, L. 1971; R.C.M. 1947, 75-8905.

Part 7

Work-Study Program

Part Cross-References
Student financial assistance, Title 20, ch. 26.

20-25-701. Definitions and purpose. (1) As used in this part, unless the context otherwise requires, the following definitions apply:

(a) "Institution" means any public institution of postsecondary education governed, supervised, or coordinated by the board of regents of higher education.

(b) "Student" means any Montana resident, as established by the board of regents of higher education, who has met the qualifications for enrollment as a full-time student at an institution or who is presently enrolled as a full-time student in good standing, as determined by the institution.

(2) It is the purpose of this part to help ensure that no resident of Montana be denied attendance at institutions governed, supervised, or coordinated by the board of regents of higher education because of financial barriers and further to provide low-cost supplemental assistance for all governing units within Montana. The legislature intends that any Montana resident wishing to gain admittance to such institutions in Montana, within necessary budgetary limitations as provided by law, shall be allowed the opportunity to earn in part or in total sufficient money to pay the costs accompanying such attendance through employment by state and local governing units and certain public interest organizations.

History: En. 75-9101, 75-9102 by Secs. 1, 2, Ch. 307, L. 1974; R.C.M. 1947, 75-9101, 75-9102.

20-25-702. Montana work-study program. The Montana work-study program is hereby established to be administered by the board of regents of higher education as provided by this part.

History: En. 75-9103 by Sec. 3, Ch. 307, L. 1974; R.C.M. 1947, 75-9103.

20-25-703. Limitation on use of funds. No less than 70% of the funds allocated to the program shall be used to provide job opportunities for students with demonstrated financial need. The remainder of the funds allocated to this program may be used to provide job opportunities on a basis other than financial need. Such other bases include but are not limited to:

(1) laboratory, teaching, and tutorial assistantships requiring particular skills; and

(2) cases in which a student's family cannot demonstrate financial need but in which the student has a desire to contribute toward his education through employment.

History: En. 75-9104 by Sec. 4, Ch. 307, L. 1974; R.C.M. 1947, 75-9104.

20-25-704. Funds supplemental to other funds. All funds allocated through this program are supplemental in nature and are not meant to replace existing federal and state student financial assistance funds or any other funds that would otherwise be appropriated for student assistance.

History: En. 75-9105 by Sec. 5, Ch. 307, L. 1974; R.C.M. 1947, 75-9105.

20-25-705. Administration. The board of regents of higher education shall promulgate rules for the allocation of program funds among the institutions.

History: **En. 75-9106 by Sec. 6, Ch. 307, L. 1974; R.C.M. 1947, 75-9106.**

Cross-References

Rulemaking power of regents not subject to Montana Administrative Procedure Act, 2-4-102.

20-25-706. Eligibility. Any local governing body; state or local administrative agency, department, board, commission; judicial, legislative, or other governmental unit; or nonprofit private organization is eligible to employ Montana students under the program as determined by the board of regents of higher education and within the funding limitations of the program, which eligibility:

(1) will not result in the displacement of employed workers or impair existing contracts for services;

(2) will not involve any partisan or nonpartisan political activity associated with a candidate or contending group or faction in an election for public or party office;

(3) will not involve the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place of worship; and

(4) in the case of nonprofit organizations other than governmental units, will result in employment which is in the general public interest rather than in the interest of a particular group.

History: **En. 75-9107 by Sec. 7, Ch. 307, L. 1974; R.C.M. 1947, 75-9107; amd. Sec. 13, Ch. 384, L. 1979.**

20-25-707. Antidiscrimination. No employer is eligible to employ any person under this program if the employer practices discrimination in employment against any individual because of race, creed, religion, color, political ideas, sex, age, marital status, physical or mental handicap, ancestry, or national origin.

History: **En. 75-9108 by Sec. 8, Ch. 307, L. 1974; amd. Sec. 36, Ch. 266, L. 1977; R.C.M. 1947, 75-9108.**

Cross-References

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

Illegal discrimination, Title 49, ch. 2.

Governmental Code of Fair Practices, Title 49, ch. 3.

Rights of the handicapped, Title 49, ch. 4.

20-25-708. Approval of salaries. The salaries paid to students employed under this program and the number of hours each student works shall be approved by institution officers administering the program, subject to guidelines promulgated by the board of regents of higher education; provided that in no case will any student employed under the program be paid less than the minimum wage as provided by law.

History: **En. 75-9109 by Sec. 9, Ch. 307, L. 1974; R.C.M. 1947, 75-9109.**

Cross-References

Minimum wages, Title 39, ch. 3, part 4.

20-25-709. Contributions from employers. Each employer must contribute toward the salary of each student employed under the program at a level determined by the board of regents of higher education but at a level no less than 30% of the student's hourly wage.

History: En. 75-9110 by Sec. 10, Ch. 307, L. 1974; R.C.M. 1947, 75-9110.

Part 8

Western Regional Higher Education Compact

20-25-801. Western Regional Higher Education Compact approved. The legislature of the state of Montana hereby approves, ratifies, and adopts the Western Regional Higher Education Compact approved by the western governors conference meeting at Denver, Colorado, on November 10, 1950, which compact is as follows:

WESTERN REGIONAL HIGHER EDUCATION COMPACT

ARTICLE I

(1) WHEREAS, the future of this nation and of the western states is dependent upon the quality of the education of its youth; and

(2) WHEREAS, many of the western states individually do not have sufficient numbers of potential students to warrant the establishment and maintenance within their borders of adequate facilities in all of the essential fields of technical, professional, and graduate training, nor do all of the states have the financial ability to furnish within their borders institutions capable of providing acceptable standards of training in all of the fields mentioned above; and

(3) WHEREAS, it is believed that the western states, or groups of such states within the region, cooperatively can provide acceptable and efficient educational facilities to meet the needs of the region and of the students thereof;

(4) NOW, THEREFORE, the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming and the territories of Alaska and Hawaii do hereby covenant and agree as follows:

ARTICLE II

Each of the compacting states and territories pledges to each of the other compacting states and territories faithful cooperation in carrying out all the purposes of this compact.

ARTICLE III

The compacting states and territories hereby create the western interstate commission for higher education, hereinafter called the commission. Said commission shall be a body corporate of each compacting state and territory and an agency thereof. The commission shall have all the powers and duties set forth herein, including the power to sue and be sued and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states and territories.

ARTICLE IV

(1) The commission shall consist of three resident members from each compacting state or territory. At all times one commissioner from each compacting state or territory shall be an educator engaged in the field of higher education in the state or territory from which he is appointed.

(2) The commissioners from each state and territory shall be appointed by the governor thereof as provided by law in such state or territory. Any commissioner may be removed or suspended from office as provided by the law of the state or territory from which he shall have been appointed.

(3) The terms of each commissioner shall be 4 years; provided, however, that the first three commissioners shall be appointed as follows: one for 2 years, one for 3 years, and one for 4 years. Each commissioner shall hold office until his successor shall be appointed and qualified. If any office becomes vacant for any reason, the governor shall appoint a commissioner to fill the office for the remainder of the unexpired term.

ARTICLE V

(1) Any business transacted at any meeting of the commission must be by affirmative vote of a majority of the whole number of compacting states and territories.

(2) One or more commissioners from a majority of the compacting states and territories shall constitute a quorum for the transaction of business.

(3) Each compacting state and territory represented at any meeting of the commission is entitled to one vote.

ARTICLE VI

(1) The commission shall elect from its number a chairman and a vice-chairman and may appoint and, at its pleasure, dismiss or remove such officers, agents, and employees as may be required to carry out the purpose of this compact and shall fix and determine their duties, qualifications, and compensation, having due regard for the importance of the responsibilities involved.

(2) The commissioners shall serve without compensation but shall be reimbursed for their actual and necessary expenses from the funds of the commission.

ARTICLE VII

(1) The commission shall adopt a seal and bylaws and shall adopt and promulgate rules and regulations for its management and control.

(2) The commission may elect such committees as it deems necessary for the carrying out of its functions.

(3) The commission shall establish and maintain an office within one of the compacting states for the transaction of its business and may meet at any time but in any event must meet at least once a year. The chairman may call such additional meetings and upon the request of a majority of the commissioners of three or more compacting states or territories shall call additional meetings.

(4) The commission shall submit a budget to the governor of each compacting state and territory at such time and for such period as may be required.

(5) The commission shall, after negotiations with interested institutions, determine the cost of providing the facilities for graduate and professional education for use in its contractual agreements throughout the region.

(6) On or before January 15 of each year, the commission shall submit to the governors and legislatures of the compacting states and territories a report of its activities for the preceding calendar year.

(7) The commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time for inspection by the governor of any compacting state or territory or his designated representative. The commission shall not be subject to the audit and accounting procedure of any of the compacting states or territories. The commission shall provide for an independent annual audit.

ARTICLE VIII

(1) It shall be the duty of the commission to enter into such contractual agreements with any institutions in the region offering graduate or professional education and with any of the compacting states or territories as may be required in the judgment of the commission to provide adequate service and facilities of graduate and professional education for the citizens of the respective compacting states or territories. The commission shall first endeavor to provide adequate services and facilities in the fields of dentistry, medicine, public health, and veterinary medicine and may undertake similar activities in other professional and graduate fields.

(2) For this purpose the commission may enter into contractual agreements:

(a) with the governing authority of any educational institution in the region or with any compacting state or territory to provide such graduate or professional educational services upon terms and conditions to be agreed upon between contracting parties; and

(b) with the governing authority of any educational institution in the region or with any compacting state or territory to assist in the placement of graduate or professional students in educational institutions in the region providing the desired services and facilities, upon such terms and conditions as the commission may prescribe.

(3) It shall be the duty of the commission to undertake studies of needs for professional and graduate educational facilities in the region, the resources for meeting such needs, and the long-range effects of the compact on higher education and from time to time to prepare comprehensive reports on such research for presentation to the western governors' conference and to the legislatures of the compacting states and territories. In conducting such studies, the commission may confer with any national or regional planning body which may be established. The commission shall draft and recommend to the governors of the various compacting states and territories uniform legislation dealing with problems of higher education in the region.

(4) For the purpose of this compact the word "region" shall be construed to mean the geographical limits of the several compacting states and territories.

ARTICLE IX

The operating costs of the commission shall be apportioned equally among the compacting states and territories.

ARTICLE X

This compact shall become operative and binding immediately as to those states and territories adopting it whenever five or more of the states or territories of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Alaska, and Hawaii have duly adopted it prior to July 1, 1953. This compact shall become effective as to any additional states or territories adopting thereafter at the time of such adoption.

ARTICLE XI

This compact may be terminated at any time by consent of a majority of the compacting states or territories. Consent shall be manifested by passage and signature in the usual manner of legislation expressing such consent by the legislature and governor of such terminating state. Any state or territory may at any time withdraw from this compact by means of appropriate legislation to that end. Such withdrawal shall not become effective until 2 years after written notice thereof by the governor of the withdrawing state or territory, accompanied by a certified copy of the requisite legislative action, is received by the commission. Such withdrawal shall not relieve the withdrawing state or territory from its obligations hereunder accruing prior to the effective date of withdrawal. The withdrawing state or territory may rescind its action of withdrawal at any time within the 2-year period. Thereafter, the withdrawing state or territory may be reinstated by application to and the approval by a majority vote of the commission.

ARTICLE XII

(1) If any compacting state or territory shall at any time default in the performance of any of its obligations assumed or imposed in accordance with the provisions of this compact, all rights, privileges, and benefits conferred by this compact or agreements hereunder shall be suspended from the effective date of such default as fixed by the commission.

(2) Unless such default shall be remedied within a period of 2 years following the effective date of such default, this compact may be terminated with respect to such defaulting state or territory by affirmative vote of three-fourths of the other member states or territories.

(3) Any such defaulting state may be reinstated by:

(a) performing all acts and obligations upon which it has heretofore defaulted; and

(b) application to and the approval by a majority vote of the commission.

History: **En. Sec. 1, Ch. 216, L. 1951; R.C.M. 1947, 75-4901.**

20-25-802. Effective date — notice of approval. Said compact shall become operative and binding at the time provided and in accordance with Article X of said compact. The governor of Montana shall give notice of the approval, ratification, and adoption of said compact by the 32nd legislative assembly of the state of Montana to the governors of each of the states and territories named in said Article X of said compact. The governors shall have power to appoint the commissioners for which provision is made in the compact, and said commissioners shall have the power and authority specified in said compact and such other power and authority as may hereafter be prescribed by law.

History: En. Sec. 2, Ch. 216, L. 1951; R.C.M. 1947, 75-4902.

20-25-803. Authority of western interstate commission for higher education to make agreements for placement of students. The western interstate commission for higher education is authorized to act on behalf of this state in making arrangements for the placement of students in institutions and programs of higher learning outside the states which are parties to the compact for establishing the commission. For that purpose, the commission may negotiate and enter into arrangements and contracts with this state or any appropriate agency thereof, with public and private educational institutions and agencies, and with states and other governmental entities. Such arrangements and contracts may provide for the obtaining of one or more places for students on either a special or continuing basis, the payment of partial or full tuition and other charges, and the furnishing of reciprocal, compensating, or other advantages and benefits in support of the educational program involved.

History: En. Sec. 1, Ch. 128, L. 1971; R.C.M. 1947, 75-4903.

Cross-References

Power of community college board of trustees to enter into agreements with Commission, 20-15-225.

20-25-804. Form and contents of agreements. The authority conferred by 20-25-803 shall be exercised only pursuant to written agreement between an agency of this state having responsibility for or duties with respect to programs for assisting residents of this state to obtain higher education. Any such agreements shall include provisions for the payment of tuition and any other costs, and no such agreement shall be made which commits this state or any agency or officer thereof to any obligation for which funds have not been appropriated or otherwise made available in accordance with law.

History: En. Sec. 2, Ch. 128, L. 1971; R.C.M. 1947, 75-4904.

Cross-References

Appropriation and disbursement of money from treasury, 17-8-101.

Limit on expenditures, 17-8-103.

20-25-805. State obligations or rights under compact not altered. Nothing contained in this chapter shall be construed to alter any of the obligations or restrict or impair any rights which this state may have under the compact establishing the commission.

History: En. Sec. 3, Ch. 128, L. 1971; R.C.M. 1947, 75-4905.

Cross-References

Impairment of contracts prohibited, Art. II, sec. 31, Mont. Const.

20-25-806. Appointment of commissioners to the western interstate commission for higher education. (1) In making the appointments of commissioners provided for in 20-25-801, the governor shall appoint three members as follows:

(a) one member who is an educator engaged in the field of higher education in Montana;

(b) one member who is engaged in a professional occupation; and

(c) one member who is a legislator.

(2) The term of each commissioner is 4 years as provided in the compact. The legislator appointed shall serve until the expiration of his appointment, even though his legislative term may have ended.

History: En. Sec. 1, Ch. 130, L. 1979.

CHAPTER 26

STUDENT FINANCIAL ASSISTANCE

Part 1 — Resident Student Assistance General Provisions

20-26-101. Short title.
20-26-102. Purpose.
20-26-103. Definitions.
20-26-104. Resident student financial assistance program created.

Part 2 — Resident Student Assistance Administration of Program

20-26-201. Duties of commissioner of higher education relative to program.
20-26-202. Administrative costs.
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Part 11 — Guaranteed Student Loan Program

20-26-1101. Definitions.
20-26-1102. Authorization to establish guaranteed student loan program.
20-26-1103. Duties of the board.
20-26-1104. Student loan advisory council — duties.
20-26-1105. Guaranteed student loan account.
20-26-1106. No state obligation.
20-26-1107. Dissolution — disposition of money.

Chapter Cross-References

Work-study program, Title 20, ch. 25, part 7.

Part 1

Resident Student Assistance General Provisions

20-26-101. Short title. Parts 1 and 2 may be cited as "The Montana Resident Student Financial Assistance Program".

History: En. 75-9401 by Sec. 1, Ch. 515, L. 1977; R.C.M. 1947, 75-9401.

20-26-102. Purpose. The purpose of parts 1 and 2 is to establish a program to provide financial assistance to resident Montana postsecondary students.

History: **En. 75-9402 by Sec. 2, Ch. 515, L. 1977; R.C.M. 1947, 75-9402.**

20-26-103. Definitions. As used in parts 1 and 2, the following definitions apply:

(1) "Resident student" means a person who was a resident of Montana prior to enrolling and who is attending a qualified postsecondary institution within Montana.

(2) "Postsecondary institution" includes the units of the university system and any postsecondary institution accredited or licensed under chapter 30 of this title.

(3) "Program advisory council" means the guaranteed student loan advisory council created by 2-15-1520.

History: **(1), (2)En. 75-9403 by Sec. 3, Ch. 515, L. 1977; Sec. 75-9403, R.C.M. 1947; (3)En. by Code Commissioner, 1979; R.C.M. 1947, 75-9403; amd. Sec. 7, Ch. 21, L. 1985.**

Cross-References

Rules for determining residence, 1-1-215.

20-26-104. Resident student financial assistance program created. There is a resident student financial assistance program administered by the commissioner of higher education in consultation with the program advisory council.

History: **En. 75-9404 by Sec. 4, Ch. 515, L. 1977; R.C.M. 1947, 75-9404.**

Part 2

Resident Student Assistance
Administration of Program

Part Cross-References

Appointment of Commissioner of Higher Education, 2-15-1506.

Duties of Commissioner of Higher Education, 20-2-131.

20-26-201. Duties of commissioner of higher education relative to program. In consultation with the program advisory council, the commissioner of higher education shall:

(1) adopt rules to administer the resident student financial assistance program, including the establishment of criteria for student eligibility which shall consider financial need;

(2) determine the amount of individual grants;

(3) establish procedures for fiscal control, fund accounting, and necessary reports; and

(4) apply for, receive, and administer federal and private moneys.

History: **En. 75-9406 by Sec. 6, Ch. 515, L. 1977; R.C.M. 1947, 75-9406.**

Cross-References

Regents' rulemaking power not subject to Montana Administrative Procedure Act, 2-4-102.

20-26-202. Administrative costs. Administration costs not provided by the federal grant that are attributable to parts 1 and 2 shall be negotiated and charged to the individual participants.

History: **En. 75-9408 by Sec. 8, Ch. 515, L. 1977; R.C.M. 1947, 75-9408.**

20-26-203. Deposit of moneys. Funds received by the commissioner of higher education for the resident student financial assistance program, including funds for the administration of parts 1 and 2, shall be deposited in the state treasury.

History: **En. 75-9407 by Sec. 7, Ch. 515, L. 1977; R.C.M. 1947, 75-9407.**

Cross-References

Deposits and investments, Title 17, ch. 6.

Parts 3 through 10 reserved

Part 11

Guaranteed Student Loan Program

20-26-1101. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of regents of higher education.

(2) "Council" means the guaranteed student loan advisory council established in 2-15-1520.

(3) "Eligible educational institution" means any institution approved by the United States commissioner of education as eligible to participate in the guaranteed student loan program pursuant to Title IV of the Higher Education Act of 1965, as amended.

(4) "Guaranteed student loan program" means the program established by the board pursuant to this part.

(5) "Nonprofit corporation" means the private nonprofit corporation designated by the board to administer student loans.

History: **En. Sec. 3, Ch. 691, L. 1979.**

20-26-1102. Authorization to establish guaranteed student loan program. (1) The board may establish and contract for the operation of a guaranteed student loan program for the purpose of making available to students improved opportunities for education by guaranteeing loans in accordance with applicable federal law to persons attending or accepted for enrollment at an eligible educational institution.

(2) The board is designated as the state representative for receiving federal, public, or private money that is now or will be made available under any act of the congress of the United States or otherwise for purposes of the guaranteed student loan program.

History: **En. Sec. 4, Ch. 691, L. 1979.**

20-26-1103. Duties of the board. In discharging its duties in relation to the guaranteed student loan program, the board shall:

(1) act as guarantor on loans of money, upon such terms and conditions as the board may prescribe, to assist persons attending or accepted for enrollment at an eligible educational institution to meet their educational expenses;

(2) approve financial or credit institutions, insurance companies, or other lenders as eligible lenders upon their meeting the standards established by the board for making guaranteed student loans;

(3) incur and discharge debts, including defaulted loan obligations that have been guaranteed by the board;

(4) make and execute agreements, contracts, and other instruments with any public or private person or agency, including the United States commissioner of education, for the administration of the guaranteed student loan program;

(5) contract with a nonprofit corporation for the operation of the guaranteed student loan program to provide loan approval processing, essential and special loan servicing, preclaims assistance, claim processing and collections, and other services that would promote lender participation and loan availability to students;

(6) perform any other duties necessary for the administration of the guaranteed student loan program.

History: En. Sec. 5, Ch. 691, L. 1979.

20-26-1104. Student loan advisory council — duties. The council shall:

(1) advise the board on policies, rules, and procedures necessary for accomplishing the provisions of this part;

(2) make recommendations to the board concerning the designation of a nonprofit corporation;

(3) monitor the nonprofit corporation to assure that both the students and lenders are adequately served; and

(4) advise on the adequacy and proper execution of any contracts entered into between the board and the nonprofit corporation.

History: En. Sec. 6, Ch. 691, L. 1979.

20-26-1105. Guaranteed student loan account. (1) There is a guaranteed student loan account within the other special revenue funds provided for in 17-2-102.

(2) The board shall credit to the account established in subsection (1) all money designated for the guaranteed student loan program by the United States or by any other public or private source. All expenses incurred by the board in connection with the guaranteed student loan program, including principal and interest payments required because of loan defaults, must be charged against the account.

(3) Money in the account not needed to meet current obligations of the board in the exercise of its responsibilities as guarantor, as provided for in this part, must be invested in accordance with the provisions of Title 17, chapter 6. Interest proceeds must be credited to the account.

(4) Money on deposit in the guaranteed student loan account shall not revert to the general fund at the close of any fiscal year.

History: En. Sec. 7, Ch. 691, L. 1979; amd. Sec. 20, Ch. 281, L. 1983; amd. Sec. 1, Ch. 134, L. 1987.

Compiler's Comments

1987 Amendment: In (1) substituted "other special revenue funds" for "federal special revenue fund".

20-26-1106. No state obligation. The legislature is not obligated to appropriate any money to pay for guaranteed student loan defaults. For the purpose of the guaranteed student loan program, neither the board nor the nonprofit corporation may obligate the credit of the state.

History: En. Sec. 8, Ch. 691, L. 1979.

20-26-1107. Dissolution — disposition of money. (1) The guaranteed student loan program may not be dissolved until all contractual obligations have been satisfied and all loans guaranteed have been paid by the borrower or, if in default, by the board.

(2) Upon dissolution of the program or the cessation of the program's activities, all property and money of the board relating to the guaranteed student loan program not refundable to the federal government as provided by law vest in the state and shall be credited to the general fund.

History: En. Sec. 9, Ch. 691, L. 1979.

CHAPTERS 27 THROUGH 29

RESERVED

CHAPTER 30

POSTSECONDARY EDUCATIONAL INSTITUTIONS

Part 1 — General Provisions

20-30-101. Legislative purpose and definitions.
20-30-102. Exemptions.
20-30-103. Administration.
20-30-104. Advisory council — duties — organization — compensation.
20-30-105. Preservation of records.

Part 2 — Administration by Department of Commerce

20-30-201. Powers and duties of department.
20-30-202. Minimum standards.
20-30-203. Acts prohibited without permit or license.

Part 3 — Licenses and Permits

20-30-301. License to operate institution.
20-30-302. Permit to act as agent.
20-30-303. Denial of application for license or permit.
20-30-304. Revocation of license or permit.
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Part 4 — Remedies and Enforcement

20-30-401. Civil relief.
20-30-402. Enforceability of notes and contracts.
20-30-403. Violations — criminal — penalty.
20-30-404. Jurisdiction of courts — service of process.
20-30-405. Enforcement — injunction.

Part 1

General Provisions

20-30-101. Legislative purpose and definitions. (1) It is the policy of this state to encourage and enable its citizens to obtain and receive an education commensurate with their abilities and desires. It is recognized that institutions offering postsecondary educational, vocational, and professional instruction perform a useful and necessary service to the citizens of the state in achieving this objective. It is found that certain institutions have either by unscrupulous, unfair, and deceptive practices or through substandard instruction deprived the citizens of this state of educational opportunity and subjected them to financial loss. The actions of such institutions also reflect unfavorably upon the reputable postsecondary institutions which are in the great majority. Thus it is the purpose of this chapter to provide for the protection, education, and welfare of the citizens of this state.

(2) As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Advisory council" or "council" means the advisory council created by 2-15-1804.

(b) "Agent" means any person owning any interest in, employed by, or representing a postsecondary educational institution in this or another state who, by solicitation in any form made in this state, seeks to enroll or enrolls a resident of this state in such postsecondary institution or who offers to award educational credentials on behalf of such institution for remuneration or who holds himself out to the residents of this state as representing a postsecondary institution for any such purpose.

(c) "Application" means either an application for the initial issuance of a license or permit or for the renewal of a license or permit.

(d) "Department" means the department of commerce.

(e) "Education or educational services" means a class, course, or program of training, instruction, or study.

(f) "Educational credential" means a degree, diploma, certificate, transcript, report, document, letters of designation, marks, appellations, series of letters, numbers, or words which signify, purport, or are generally taken to mean enrollment, attendance, progress, or satisfactory completion of the requirements or prerequisites for education through a postsecondary educational institution.

(g) "Grant" means sell, award, confer, bestow, or give.

(h) "Institution" means an academic, vocational, technical, home study, business, professional, or other school, college, or university or any person, association, or corporation offering educational credentials or educational services but does not include any institution established and maintained under the laws of this state.

(i) "License" means written approval issued by the department to operate or to contract to operate a postsecondary institution in this state.

(j) "Offer" means, in addition to its usual meaning, to advertise, publicize, solicit, or encourage any person, directly or indirectly, in any form, to perform the act described.

(k) "Operate" means to establish and maintain any facility in this state for the purpose described and includes a contract with any person, association, or corporation to establish and maintain such facility.

(l) "Permit" means written approval issued by the department to any person to act as an agent for a postsecondary educational institution.

(m) "Postsecondary education" means the education or educational services offered to persons who have completed or terminated their secondary education or who are beyond the age of compulsory school attendance, for the attainment of academic, professional, or vocational objectives.

History: **En. Secs. 1, 2, Ch. 296, L. 1974; Secs. 75-9201, 75-9202, R.C.M. 1947; (2)(a)En. by Code Commissioner, 1979; R.C.M. 1947, 75-9201, 75-9202; amd. Sec. 1, Ch. 94, L. 1981; amd. Sec. 2, Ch. 274, L. 1981.**

20-30-102. Exemptions. The following are exempt from the provisions of this chapter:

(1) any program or course of instruction of an institution accredited by a national or regional accrediting agency recognized by the board of regents of higher education and notification of such recognition having been given to the department by the board;

(2) education sponsored by a trade, business, professional, or fraternal organization principally for the membership of the organization or offered without the payment of fees, unless such education is offered as leading toward educational credentials;

(3) avocational or recreational education and institutions offering such education exclusively;

(4) education offered by charitable or religious institutions, organizations, or agencies unless such education is offered as leading toward educational credentials;

(5) institutions possessing a valid certificate issued by the federal aviation agency;

(6) schools of cosmetology possessing a valid certificate of registration issued under the provisions of Title 37, chapter 31.

History: **En. 75-9203 by Sec. 3, Ch. 296, L. 1974; amd. Sec. 1, Ch. 211, L. 1975; R.C.M. 1947, 75-9203; amd. Sec. 1, Ch. 469, L. 1979; amd. Sec. 2, Ch. 94, L. 1981.**

20-30-103. Administration. The department shall administer this chapter. To effect the purposes of this chapter, the department may request from any agency of the state and every agency shall provide such information as will enable the department to exercise properly its powers and perform its duties. Nothing herein shall be construed to interfere with the purpose and function of any agency of the state.

History: **En. 75-9204 by Sec. 4, Ch. 296, L. 1974; R.C.M. 1947, 75-9204.**

20-30-104. Advisory council — duties — organization — compensation. (1) The advisory council shall advise the department of policies, rules, and procedures necessary for carrying out the provisions of this chapter.

(2) The council's organization, meetings, quorum, and compensation are as provided in 2-15-122.

History: **En. 75-9205 by Sec. 5, Ch. 296, L. 1974; R.C.M. 1947, 75-9205(2), (3).**

Cross-References

Proprietary Postsecondary Educational Advisory Council created, 2-15-1804.

20-30-105. Preservation of records. (1) In the event any postsecondary educational institution now or hereafter located in this state proposes to discontinue its operation, the chief administrative officer, by whatever title designated, of such institution shall cause to be filed with the department the original or legible true copies of all such academic records of such institution as may be specified by the department. Such records shall include, at a minimum, such academic information as is customarily required by colleges when considering students for transfer or advanced study and, as a separate document, the academic record of each former student.

(2) In the event it appears to the department that any such records of an institution discontinuing its operations are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable, the department may seize and take possession of such records on its own motion and without order of court. The department shall maintain or cause to be maintained a permanent file of such records coming into its possession.

History: En. 75-9218 by Sec. 18, Ch. 296, L. 1974; R.C.M. 1947, 75-9218.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Public records, Title 2, ch. 6.

Part 2

Administration by Department of Commerce

20-30-201. Powers and duties of department. To administer this chapter, the department shall have the following powers and duties:

(1) to establish minimum criteria, in consultation with the commissioner of higher education, conforming to the minimum standards in 20-30-202, which applicants for a license or permit shall satisfy before a license or permit shall be issued, provided the requirements of the Administrative Procedure Act for rulemaking procedures have been complied with;

(2) to receive, to investigate as it may deem necessary, and to act upon applications for a license or permit;

(3) to maintain a list of licensed institutions, of persons possessing permits, and of accrediting agencies recognized under 20-30-102(1), provided that an institution and its agent exempt from this chapter may be included in such list upon the filing of an affidavit of exemption;

(4) to negotiate and enter into reciprocal interstate agreements with like agencies in other states if such agreements are or will affect the purposes of this chapter, provided that nothing contained in such agreement shall be construed as limiting the powers and duties of the department with respect to investigating or acting upon any application for a license or for a permit or with respect to the enforcement of any provision of this chapter or regulations adopted hereunder;

(5) to receive and cause to be maintained for a reasonable length of time, not less than 10 years, copies of academic records pursuant to 20-30-105;

(6) to establish, with the advice of the advisory council, rules and procedures necessary for the implementation of this chapter which shall have the force of law, provided the requirements of the Montana Administrative Procedure Act for rulemaking procedures have been complied with, and to hold hearings as it may deem advisable in developing such rules and procedures or to aid in any investigation or inquiry; and

(7) to investigate as it may deem necessary, on its own motion or on the filing of a verified complaint filed with it, any institution or person subject to or reasonably believed by the department to be subject to the provisions of this chapter; to subpoena any persons or documents pertaining to such investigation, which subpoenas shall be enforceable in a district court of this state; to require answers in writing under oath to questions or interrogatories propounded by the department; and to administer an oath or affirmation to any person in connection with any investigation.

History: En. 75-9206 by Sec. 6, Ch. 296, L. 1974; R.C.M. 1947, 75-9206.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Oath defined, 1-1-201.

Oaths, Title 1, ch. 6.

Montana Administrative Procedure Act, Title 2, ch. 4.

Power of agencies to issue subpoenas, 2-4-104.

Power of hearing officer to issue subpoenas, 2-4-611.

Public records, Title 2, ch. 6.

Prohibition on distribution or sale of mailing lists, 2-6-109.

Preservation of records, Title 22, ch. 3, part 2.

Depositions upon written questions, Rule 31, M.R.Civ.P. (see Title 25, ch. 20).

Interrogatories, Rule 33, M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Affidavits, Title 26, ch. 1, part 10.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

Perjury, 45-7-201.

False swearing, 45-7-202.

20-30-202. Minimum standards. (1) In establishing the criteria required by 20-30-201, the department shall observe and shall require compliance with the following minimum standards:

(a) A postsecondary educational institution must be maintained and operated or, in the case of a new institution, it must demonstrate that it can be maintained and operated in compliance with the following minimum standards:

(i) that the quality and content of each course or program of instruction, training, or study are such as may reasonably and adequately achieve the stated objective for which the course or program is offered;

(ii) that the institution has adequate space, equipment, instructional materials, and personnel to provide education of good quality;

(iii) that the education and experience qualifications of directors, administrators, supervisors, and instructors are such as may reasonably insure that the students will receive education consistent with the objectives of the course or program of study;

(iv) that the institution provides students and other interested persons with a catalog or brochure containing information describing the programs offered; program objectives; length of program; schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study; cancellation and refund policies; and such other material facts concerning the institution and program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein, together with any other disclosures required by the department, and that such information is provided to prospective students prior to enrollment;

(v) that upon satisfactory completion of training, the student is given appropriate educational credentials by the institution, indicating that the course or courses of instruction or study have been satisfactorily completed;

(vi) that adequate records are maintained by the institution to show attendance, programs, or grades and that satisfactory standards are enforced relating to attendance, progress, and performance;

(vii) that the institution is maintained and operated in compliance with all pertinent ordinances and laws relating to the safety and health of all persons upon the premises;

(viii) that the institution is financially sound and capable of fulfilling its commitments to students;

(ix) that neither the institution nor its agents engage in advertising, sales, collection, credit, or other practices of any kind which are false, deceptive, misleading, or unfair;

(x) that the chief executive officer, trustees, directors, owners, administrators, supervisors, staff, and instructors are of good reputation and character; and

(xi) that the institution has a fair and equitable cancellation and refund policy.

(b) An applicant for a permit to act as agent shall be an individual of good reputation and character and shall represent only a postsecondary educational institution which meets the minimum standards established in this section and the criteria established under 20-30-201.

(c) No postsecondary educational institution may use the term "university" or "college" without authorization to do so from the department in consultation with the commissioner of higher education; provided that any institution subject to this chapter located within this state which used either term on January 1, 1974, may continue to do so by filing an affidavit to that effect with the department prior to January 1, 1975.

(2) Accreditation by national or regional accrediting agencies recognized by the United States office of education may be accepted by the department as evidence of compliance with the minimum standards established hereunder and the criteria established under 20-30-201, provided the department, after conferring with the commissioner of higher education, may require such further evidence and make such further investigation as in its judgment may be necessary. Accreditation by a recognized, specialized accrediting agency may be accepted as evidence of such compliance only as to the portion or program of an institution accredited by such agency if the institution as a whole is not accredited.

History: En. 75-9207 by Sec. 7, Ch. 296, L. 1974; R.C.M. 1947, 75-9207.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Perjury, 45-7-201.

False swearing, 45-7-202.

20-30-203. Acts prohibited without permit or license. No person, group, association, or corporation, alone or in concert with others, shall:

(1) operate in this state a postsecondary educational institution unless the institution is exempt from the provisions of this chapter or is licensed by the department;

(2) offer instruction in, enrollment in, or grant of educational credentials as or through an agent by a postsecondary educational institution not exempted from this chapter, whether within or without the state, unless the agent possesses a currently valid permit as required by this chapter;

(3) accept or receive contracts or applications for enrollment from an agent unless the agent possesses a currently valid permit as required by this chapter;

(4) offer education or educational services or educate or provide educational service, offer to enroll or enroll, contract or offer to contract with any person for such purpose or offer to grant, grant, or contract with any person for that purpose in this state unless the person, group, association, or corporation complies with the minimum standards in 20-30-202, the criteria established by the department, and the rules adopted by the department;

(5) act as an agent for a postsecondary educational institution unless currently possessing a valid permit from the department.

History: En. 75-9208 by Sec. 8, Ch. 296, L. 1974; R.C.M. 1947, 75-9208.

Cross-References

Penalty for violation of school laws, 20-1-207.

Part 3

Licenses and Permits

Part Cross-References

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

20-30-301. License to operate institution. (1) Each postsecondary educational institution not exempted from this chapter intending to operate or presently operating in this state shall apply to the department for a license to operate. Application shall be made on forms prescribed by the department. Each application shall be accompanied by the most recent catalog or brochure published or intended to be published by the institution. The application also shall be accompanied by evidence of payment of the fees required by this chapter.

(2) After review of the application and any further information required by the department, any investigation of the application which the department may deem necessary or appropriate, and evidence of a surety bond as required by this chapter, the department shall either issue or not issue a license to operate a postsecondary educational institution. The license shall be nontransferable and may be upon such terms and conditions as the department may require.

(3) The license shall be in a form prescribed by the department and shall state in a clear and conspicuous manner at least the following information:

(a) date of issuance, effective date, and date of expiration;

(b) the name and address of the institution licensed;

(c) the authority for and conditions of approval; and

(d) any terms or conditions required by the department.

(4) No license shall be valid for more than 2 years and may be valid for a lesser period of time.

History: En. 75-9209 by Sec. 9, Ch. 296, L. 1974; R.C.M. 1947, 75-9209.

20-30-302. Permit to act as agent. (1) Each person intending to act in this state as an agent for a postsecondary institution not exempt from the provisions of this chapter shall make application to the department. Application shall be made on forms prescribed by the department. Each application shall be accompanied by evidence of payment of the fees required by this chapter and the sworn affidavits of three residents of this state as to the good character and reputation of the applicant and shall show the name and address of the institution which the applicant intends to represent.

(2) In the event the applicant intends to represent an institution not licensed to operate in this state, the application shall be accompanied by the information required of institutions applying for such a license.

(3) After review of the application and any further information required by the department, any investigation deemed necessary or appropriate, and evidence of a surety bond required by this chapter, the department shall issue or not issue the permit to the applicant. The permit shall be nontransferable and may be upon such terms and conditions as the department may require.

(4) The permit shall be in the form prescribed by the department and shall state in a clear and conspicuous manner at least the following information:

(a) the date of issuance, effective date, and date of expiration;

(b) the name and address of the agent;

(c) the name and address of the institution or institutions the agent may represent;

(d) the authority for and conditions of approval; and

(e) any terms or conditions required by the department.

(5) No permit shall be valid for more than 2 years and may be valid for a lesser period of time.

History: En. 75-9210 by Sec. 10, Ch. 296, L. 1974; R.C.M. 1947, 75-9210.

Cross-References

Oaths, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.

Perjury, 45-7-201.

False swearing, 45-7-202.

20-30-303. Denial of application for license or permit. (1) If the department determines that an application is deficient under the criteria established for the issuance of a license or permit, the department shall notify the applicant in writing of that determination and the deficiencies.

(2) If the applicant requests and the request demonstrates to the department the applicant's intention and ability to remedy the deficiencies causing the denial of the license or permit, the department may grant the applicant a reasonable period of time to take such action.

(3) If a request under subsection (2) above is not made or a request is made and is denied or the period of time granted expires without remedy of the deficiencies, the application shall be denied. The department shall notify the applicant of the denial, the reasons therefor, and the opportunity of the applicant for a hearing before the department.

(4) In the event an application for a permit is denied, the department shall notify in writing the institution or institutions represented or to be represented by the applicant.

History: En. 75-9211 by Sec. 11, Ch. 296, L. 1974; R.C.M. 1947, 75-9211.

20-30-304. Revocation of license or permit. (1) If the department has reasonable cause to believe that a holder of a license or permit issued under any provision of this chapter has violated or is in violation of this chapter or criteria established under this chapter, the department may revoke the license or permit as provided.

(2) A decision respecting revocation of a license or permit shall be made after opportunity for hearing before the department. Matters concerning the revocation of licenses or permits, hearings, and judicial review will be handled as contested cases under the Administrative Procedure Act.

History: En. 75-9212 by Sec. 12, Ch. 296, L. 1974; amd. Sec. 2, Ch. 211, L. 1975; R.C.M. 1947, 75-9212.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

20-30-305. Bond required. (1) At the time application is made for license, the department may require the postsecondary educational institution making the application to file with the department a good and sufficient surety bond in such sum as may be determined by the department. The bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond shall be conditioned to provide indemnification to any student or enrollee or his parent or guardian, or class thereof, determined to have suffered loss or damage as a result of any act or practice which is a violation of this chapter by the postsecondary educational institution and that the bonding company shall pay any final nonappealable judgment rendered by any court of this state having jurisdiction upon receipt of written notification thereof. Regardless of the number of years that the bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum of the bond. The bond shall be for 2 years or coterminous with the license.

(2) An application for a permit shall be accompanied by a good and sufficient surety bond in a penal sum of $1,000. The bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond may be in blanket form to cover more than one agent for a postsecondary educational institution, but it shall cover each agent for the institution in a penal sum of $1,000. The bond shall be conditioned to provide indemnification to any student, enrollee, or the parents or guardian, or class thereof, determined to have suffered loss or damage as a result of any act or practice which is a violation of this chapter by the agent and that the bonding company shall pay any final nonappealable judgment rendered by any court of this state having jurisdiction upon receipt of written notification thereof. Regardless of the number of years that the bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum thereof. The bond shall be for 2 years or coterminous with the permit.

(3) The surety bond to be filed hereunder shall cover the period of the license or the permit except when a surety is released. A surety on any bond filed under the provisions of this section may be released after the surety has served written notice to the department 40 days prior to the release. The release does not discharge or otherwise affect any claim filed by a student or

enrollee or his parent or guardian for loss or damage resulting from any act or practice which is a violation of this act alleged to have occurred while the bond was in effect or from an institution's ceasing operations during the term for which tuition has been paid while the bond was in force.

(4) A license for an institution to operate or a permit to an agent shall be suspended by operation of law when the institution or agent is no longer covered by a surety bond as required by this section; but the department shall cause the institution or an agent, or both, to receive at least 30 days' written notice prior to the release of the surety to the effect that the license or permit shall be suspended by operation of law until another surety bond is filed in the same manner and like amount as the bond being terminated.

History: En. 75-9216 by Sec. 16, Ch. 296, L. 1974; amd. Sec. 38, Ch. 266, L. 1977; R.C.M. 1947, 75-9216.

20-30-306. Fees. All fees collected pursuant to the provisions of this chapter shall be deposited in the general fund, and no fees collected under the provisions of this chapter shall be subject to refund. The fees to be collected by the department shall accompany an application for authorization to operate or for an agent's permit, in accordance with the following schedule:

(1) The initial application fee for a license shall be $50.
(2) The renewal fee for a license shall be $25.
(3) The initial fee for permit shall be $25.
(4) The renewal fee for permit shall be $10.

History: En. 75-9217 by Sec. 17, Ch. 296, L. 1974; R.C.M. 1947, 75-9217.

Part 4

Remedies and Enforcement

20-30-401. Civil relief. Any person claiming loss or damage as a result of any act or practice by a postsecondary institution or its agent, or both, which act or practice violates the criteria established by the department under 20-30-201 or the prohibitions in 20-30-203, may sue in a court of proper jurisdiction of this state the institution or the agent, or both, and their sureties for the amount of the damage or loss and if successful shall be awarded, in addition to damages, court costs and reasonable attorney's fees.

History: En. 75-9215 by Sec. 15, Ch. 296, L. 1974; amd. Sec. 37, Ch. 266, L. 1977; R.C.M. 1947, 75-9215.

Cross-References

Costs, Title 25, ch. 10.

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

20-30-402. Enforceability of notes and contracts. (1) If the person to whom educational services are to be rendered or furnished by a postsecondary educational institution is a resident of this state at the time any contract relating to payment for such services or any note, instrument, or other evidence of indebtedness relating thereto is entered into, the provisions of this section shall govern the rights of the parties to such contract or evidence of indebtedness. In such event, the following agreements entered into in connection with the contract or the giving of such evidence of indebtedness are invalid:

(a) that the law of another state shall apply;

(b) that the maker or any person liable on such contract or evidence of indebtedness consents to the jurisdiction of another state;

(c) that another person is authorized to confess judgment on such contract or evidence of indebtedness; and

(d) that fixes venue.

(2) No note, instrument, or other evidence of indebtedness or contract relating to payment for education or educational services shall be enforceable in the courts of this state by any postsecondary educational institution located in Montana unless the institution shall have received a license or by any postsecondary educational institution having an agent or agents in Montana unless any and all agents who enrolled or sought to enroll the person to whom such services were to be rendered, or to whom educational credentials were to be granted, had a permit at the time of their contact with such person.

(3) For the purposes of this section, "lending agency" means any postsecondary educational institution or any person, association, partnership, or corporation controlling, controlled by, or held in common ownership with such institution loaning money to such institution or students thereof.

(4) Any lending agency extending credit or loaning money to any person for tuition, fees, or any charges whatever of a postsecondary educational institution for educational or other services or facilities to be rendered or furnished by said institution shall cause any note, instrument, or other evidence of indebtedness taken in connection with such loan or extension of credit to be conspicuously marked on the face thereof, "student loan". In the event such lending agency fails to do so, it shall be liable for any loss or damage suffered or incurred by any subsequent assignee, transferee, or holder of such evidence of indebtedness on account of the absence of such notation.

(5) Notwithstanding the presence or absence of such notation and notwithstanding any agreement to the contrary, the lending agency making such loan or extending such credit and any transferee, assignee, or holder of such evidence of indebtedness shall be subject to all defenses and claims which could be asserted against the postsecondary educational institution which was to render or furnish such services or facilities by any party to said evidence of indebtedness or by the person to whom such services or facilities were to be rendered or furnished, up to the amount remaining to be paid thereon.

History: En. 75-9219 by Sec. 19, Ch. 296, L. 1974; R.C.M. 1947, 75-9219.

Cross-References

Rules for determining residence, 1-1-215.

20-30-403. Violations — criminal — penalty. Any person, group, or entity or any owner, officer, agent, or employee thereof who shall willfully violate the provisions of 20-30-203 or who shall willfully fail or refuse to deposit with the department the records required by 20-30-105 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $1,000 or by imprisonment in the county jail not to exceed 6 months or by both such fine and imprisonment. Each day's failure to comply with the provisions of said sections shall be a separate violation. Such criminal sanctions may be imposed by a court of competent jurisdiction in an action brought by the county attorney.

History: En. 75-9220 by Sec. 20, Ch. 296, L. 1974; R.C.M. 1947, 75-9220.

Cross-References

Penalty for violation of school laws, 20-1-207.

General principles of liability, Title 45, ch. 2.

20-30-404. Jurisdiction of courts — service of process. (1) Any postsecondary educational institution not exempt from the provisions of this chapter, whether or not a resident of or having a place of business in this state, which instructs or educates or offers to instruct or educate, enrolls or offers to enroll, contracts or offers to contract to provide instructional or educational services in this state, whether such instruction or services are provided in person or by correspondence, to a resident of this state or which offers to award or awards any educational credentials to a resident of this state submits such institution and, if a natural person, his personal representative to the jurisdiction of the courts of this state concerning any cause of action arising therefrom and for the purpose of enforcement of this by injunction pursuant to 20-30-405.

(2) Service of process upon any institution subject to the jurisdiction of the courts of this state may be made by personally serving the summons upon the defendant within or outside the state, in the manner prescribed by the rules of civil procedure, with the same force and effect as if the summons had been personally served within Montana. Nothing contained in this section shall limit or affect the right to serve any process as prescribed by the rules of civil procedure.

History: En. 75-9221 by Sec. 21, Ch. 296, L. 1974; R.C.M. 1947, 75-9221.

Cross-References

Rules for determining residence, 1-1-215.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

20-30-405. Enforcement — injunction. (1) The county attorney of any county in which a postsecondary educational institution or an agent thereof is found, at the request of the department or on his own motion, may bring any appropriate action or proceeding (including injunctive proceedings or criminal proceedings pursuant to 20-30-403) in any court of competent jurisdiction for the enforcement of the provisions of this chapter.

(2) Whenever it shall appear to the department that any person, agent, group, or entity is, is about to, or has been violating any of the provisions of this chapter or any of the lawful rules or orders of the department, it may, on its own motion or on the written complaint of any person, file a petition for injunction in any court of competent jurisdiction against such person, group, or entity for the purpose of enjoining such violation or for an order directing compliance with the provisions of this chapter and all rules and orders issued by the department.

History: En. 75-9222 by Sec. 22, Ch. 296, L. 1974; R.C.M. 1947, 75-9222; amd. Sec. 14, Ch. 384, L. 1979.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

CHAPTER 31

FIRE SERVICES TRAINING SCHOOL

Part 1 — General Provisions

20-31-101. Definitions.
20-31-102. Fire services training school — creation — supervision by board of public education.
20-31-103. Purpose of school.

20-31-104. Coordination with other agencies.

Part 2 — Director

20-31-201. Director responsible to board.
20-31-202. Duties of director.

Part 3 — Advisory Council

20-31-301. Organization — procedural rules — compensation of members.
20-31-302. Duties.

Part 4 — Miscellaneous Provisions

20-31-401. Acceptance of gifts and grants — contractual agreements.
20-31-402. Cost recovery fee.

Chapter Cross-References

Firefighters, Title 7, ch. 33, parts 22, 23, and 41.

Fire protection equipment, Title 50, ch. 39.

Fire safety in public buildings, Title 50, ch. 61.

Fire hazards, Title 50, ch. 62.

Investigation of fires, Title 50, ch. 63.

Part 1

General Provisions

20-31-101. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of public education provided for in Article X, section 9, subsection (3) of the 1972 Montana constitution and 2-15-1507.

(2) "Council" means the fire services training advisory council provided for in 2-15-1519.

(3) "Director" means the director of the fire services training school provided for in 2-15-1518.

History: En. by Code Commissioner, 1979.

20-31-102. Fire services training school — creation — supervision by board of public education. There is a fire services training school. The fire services training school is allocated to the board of public education for purposes of planning and coordination. The budget request for the fire services training school shall be submitted through the board of public education. The general supervision of the school is vested in the board of public education.

History: En. 75-7716 by Sec. 1, Ch. 104, L. 1977; R.C.M. 1947, 75-7716.

20-31-103. Purpose of school. The purpose of the fire services training school is to:

(1) provide fire service personnel with professional training;

(2) identify new methods of fire prevention and suppression and disseminate information about them;

(3) provide a resource center for use by local fire services;

(4) provide testing and certification for personnel and apparatus; and

(5) coordinate fire services training in the state.

History: En. 75-7717 by Sec. 2, Ch. 104, L. 1977; R.C.M. 1947, 75-7717; amd. Sec. 2, Ch. 6, L. 1987.

Compiler's Comments

1987 Amendment: Substituted existing (1) through (5) for former (1) through (7) that read: "(1) reduce the loss of life and personal injury caused by fire;

(2) reduce property damage and loss caused by fire;

(3) provide paid, volunteer, and other publicly or privately employed firefighters with professional training;

(4) provide training in investigating the cause of fire;

(5) develop new methods of fire prevention and firefighting;

(6) provide expertise for testing firefighting methods and firefighting equipment;

(7) provide public educational programs to promote fire prevention."

20-31-104. Coordination with other agencies. The fire services training school shall coordinate its programs and cooperate with state and local fire services to the maximum possible extent in accordance with the policy of the board of public education.

History: En. 75-7725 by Sec. 10, Ch. 104, L. 1977; R.C.M. 1947, 75-7725.

Part 2

Director

20-31-201. Director responsible to board. The director is responsible to the board for carrying out the provisions of this chapter.

History: En. 75-7721 by Sec. 6, Ch. 104, L. 1977; R.C.M. 1947, 75-7721(part).

20-31-202. Duties of director. The director shall appoint a staff and execute policies and programs established by the board of public education for the fire services training school. The director is responsible for the direction of staff and operation of the school.

History: En. 75-7722 by Sec. 7, Ch. 104, L. 1977; R.C.M. 1947, 75-7722.

Part 3

Advisory Council

20-31-301. Organization — procedural rules — compensation of members. (1) The members of the fire services advisory council shall elect a chairman, a vice-chairman, and such other officers considered advisable by the council. The terms of the officers shall be established by the council.

(2) The council shall adopt rules governing its procedures subject to approval of the board of public education.

(3) Members of the council shall receive compensation under 2-18-501 through 2-18-503.

History: En. 75-7719 by Sec. 4, Ch. 104, L. 1977; R.C.M. 1947, 75-7719.

20-31-302. Duties. The fire services training advisory council shall advise the board and director of the fire services training school on planning, coordination, governance, management, and control of the fire services training school to promote the purposes of the school.

History: En. 75-7720 by Sec. 5, Ch. 104, L. 1977; R.C.M. 1947, 75-7720.

Part 4

Miscellaneous Provisions

20-31-401. Acceptance of gifts and grants — contractual agreements. The board of public education may accept gifts, donations, and grants of property and services on behalf of the fire services training school. The board may enter into contractual agreements necessary to facilitate achievement of the purposes of the school.

History: En. 75-7723 by Sec. 8, Ch. 104, L. 1977; R.C.M. 1947, 75-7723.

20-31-402. Cost recovery fee. The board of public education may establish a cost recovery fee for training of commercially employed firefighters, and such fees shall be deposited to the general fund.

History: En. 75-7724 by Sec. 9, Ch. 104, L. 1977; R.C.M. 1947, 75-7724.

TITLE 21

RESERVED

TITLE 22

LIBRARIES, ARTS, AND ANTIQUITIES

Ch.
1. Libraries.
2. Arts.
3. Antiquities.

CHAPTER 1

LIBRARIES

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Part 6 — Interstate Library Compact

22-1-601. Library compact.
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22-1-1101. Short title.
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22-1-1103. Nondisclosure of library records.
22-1-1104 through 22-1-1110 reserved.
22-1-1111. Penalty.

Chapter Cross-References

Legislative provision for libraries authorized, Art. X, sec. 1, Mont. Const.

School libraries required, 20-7-202.

Part 1

State Library Commission

Part Cross-References

Library Commission allocated to the State Board of Education, 2-15-1511.

22-1-101. State library commission established. (1) There is a state library commission.

(2) This commission is composed of the following members:

(a) the state superintendent of public instruction or his designee;

(b) five persons appointed by the governor, who shall serve staggered terms of 3 years; and

(c) a librarian appointed by the commissioner of higher education from one of the six units of the Montana university system, who shall serve a term of 3 years.

(3) The commission shall annually elect a chairman from its membership.

(4) The members of said commission shall be compensated and receive travel expenses as provided for in 2-15-124.

History: En. Sec. 1, Ch. 184, L. 1929; re-en. Sec. 1575.1, R.C.M. 1935; amd. Sec. 1, Ch. 91, L. 1945; amd. Sec. 1, Ch. 55, L. 1961; amd. Sec. 1, Ch. 215, L. 1965; amd. Sec. 23, Ch. 439, L. 1975; R.C.M. 1947, 44-127; amd. Sec. 1, Ch. 172, L. 1983; amd. Sec. 7, Ch. 650, L. 1985.

22-1-102. Librarian and assistants. The commission shall employ as its executive officer a librarian, who is a graduate of an accredited library school and is not a member of the commission, for such compensation as the commission considers adequate. The executive officer shall perform the duties assigned by the commission and serve at the will of the commission. The commission may also employ such other assistants as are required for the performance of the commission's work. In addition to their salaries while on commission business, the librarian and assistants shall be allowed their travel expenses, as provided for in 2-18-501 through 2-18-503, as amended.

History: En. Sec. 2, Ch. 184, L. 1929; re-en. Sec. 1575.2, R.C.M. 1935; amd. Sec. 2, Ch. 91, L. 1945; amd. Sec. 2, Ch. 55, L. 1961; amd. Sec. 7, Ch. 453, L. 1977; R.C.M. 1947, 44-128.

22-1-103. State library commission — authority. The state library commission shall have the power to:

(1) give assistance and advice to all tax-supported or public libraries in the state and to all counties, cities, towns, or regions in the state which may propose to establish libraries, as to the best means of establishing and improving such libraries;

(2) maintain and operate the state library and make provision for its housing;

(3) accept and expend in accordance with the terms thereof any grant of federal funds which may become available to the state for library purposes;

(4) make rules and establish standards for the administration of the state library and for the control, distribution, and lending of books and materials;

(5) serve as the agency of the state to accept and administer any state, federal, or private funds or property appropriated for or granted to it for library service or foster libraries in the state and establish regulations under which funds shall be disbursed;

(6) provide library services for the blind and physically handicapped;

(7) furnish, by contract or otherwise, library assistance and information services to state officials, state departments, and residents of those parts of the state inadequately serviced by libraries;

(8) act as a state board of professional standards and library examiners and develop standards for public libraries and adopt rules for the certification of librarians;

(9) designate areas for the establishment of federations of libraries and designate the headquarters library for such federations.

History: En. Sec. 2, Ch. 215, L. 1965; amd. Sec. 1, Ch. 357, L. 1974; R.C.M. 1947, 44-131(part).

Cross-References

Library use privileges, 22-1-311.

Part 2

State Library

Part Cross-References

State visual, aural, and other educational media library, 20-7-201.

Natural resource information system and natural heritage program, Title 90, ch. 15.

22-1-201. State library authorized. The state library commission shall maintain and operate a state library to be located in Helena.

History: **En. 44-126.1 by Sec. 1, Ch. 3, L. 1977; R.C.M. 1947, 44-126.1.**

22-1-202 through 22-1-210 reserved.

22-1-211. Definitions. As used in this part, the following definitions apply:

(1) "Print" includes all forms of printing and duplicating, regardless of format or purpose, with the exception of correspondence and interoffice memoranda.

(2) "State publication" includes any document, compilation, journal, law, resolution, bluebook, statute, code, register, pamphlet, list, book, proceedings, report, memorandum, hearing, legislative bill, leaflet, order, regulation, directory, periodical, or magazine issued in print or purchased for distribution by the state, the legislature, constitutional officers, any state department, committee, or other state agency supported wholly or in part by state funds.

(3) "State agency" includes every state office, officer, department, division, bureau, board, commission, and agency of the state and, where applicable, all subdivisions of each.

History: **En. Sec. 1, Ch. 261, L. 1967; R.C.M. 1947, 44-132.**

22-1-212. Creation of distribution center. There is hereby created, as a division of the state library and under the direction of the state librarian, a state publications library distribution center. The center shall promote the establishment of an orderly depository library system. To this end the state library commission shall make such rules necessary to carry out the provisions of this part.

History: **En. Sec. 2, Ch. 261, L. 1967; R.C.M. 1947, 44-133.**

22-1-213. State agency publications to be deposited in state library — interlibrary loan — sale publications. Every state agency shall deposit upon release at least four copies of each of its state publications with the state library for record and depository purposes. Additional copies shall also be deposited in quantities certified to the agencies by the state library as required to meet the needs of the depository library system and to provide interlibrary loan service to those libraries without depository status. Additional copies of sale publications required by the state library shall be furnished only upon reimbursement to the state agency of the full cost of such sale publications, and the state library shall also reimburse any state agency for additional publications so required where the quantity desired will necessitate additional printing or other expense to such agency.

History: **En. Sec. 3, Ch. 261, L. 1967; R.C.M. 1947, 44-134.**

Cross-References

Distribution of Senate and House Journals and Session Laws, 5-11-203.

Printing and publications of state agencies and offices, 18-7-101.

22-1-214. Depository libraries — eligibility. The center shall enter into depository contracts with any municipal or county free library, state college or state university library, the library of congress, the midwest inter-library center, and other state libraries. The requirements for eligibility to contract as a depository library shall be established by the state library commission upon recommendations of the state librarian. The standards shall include and take into consideration the type of library, ability to preserve such publications and to make them available for public use, and also such geographical locations as will make the publications conveniently accessible to residents in all areas of the state.

History: **En. Sec. 4, Ch. 261, L. 1967; R.C.M. 1947, 44-135.**

Cross-References

Distribution of Senate and House Journals and Session Laws, 5-11-203.

Library use privileges, 22-1-311.

Participation in a library federation, 22-1-403.

22-1-215. Available publications. The center shall publish and distribute regularly to contracting depository libraries and other libraries upon request a list of available state publications.

History: **En. Sec. 5, Ch. 261, L. 1967; R.C.M. 1947, 44-136.**

22-1-216. Current publications. Upon request by the center, issuing state agencies shall furnish the center with a complete list of their current state publications and a copy of their mailing and/or exchange lists.

History: **En. Sec. 6, Ch. 261, L. 1967; R.C.M. 1947, 44-137.**

22-1-217. No general public distribution. The center shall not engage in general public distribution of either state publications or lists of publications.

History: **En. Sec. 7, Ch. 261, L. 1967; R.C.M. 1947, 44-138.**

22-1-218. Exemptions. This part does not apply to officers of or affect the duties concerning publications distributed by:

(1) the state law library;

(2) the code commissioner in connection with his duties under Title 1, chapter 11, as amended; and

(3) the legislative council in connection with its duties under 5-11-203, as amended.

History: **En. Sec. 8, Ch. 261, L. 1967; amd. Sec. 2, Ch. 3, L. 1977; R.C.M. 1947, 44-139; amd. Sec. 11, Ch. 138, L. 1979; amd. Sec. 16, Ch. 79, L. 1983.**

Cross-References

Distributions by the Supreme Court, 3-2-604.

Part 3

Free Public Libraries

Part Cross-References

Tax exemption for libraries, 15-6-201.

22-1-301. Definition. Wherever the word "city" is used in this part, it means city or town.

History: **En. Sec. 11, Ch. 260, L. 1967; R.C.M. 1947, 44-227.**

22-1-302. Purpose. It is the purpose of this part to encourage the establishment, adequate financing, and effective administration of free public libraries in this state to give the people of Montana the fullest opportunity to enrich and inform themselves through reading.

History: **En. Sec. 1, Ch. 260, L. 1967; R.C.M. 1947, 44-218.**

22-1-303. Creation of public library. A public library may be established in any county or city in any of the following ways:

(1) The governing body of any county or city desiring to establish and maintain a public library may pass and enter upon its minutes a resolution to the effect that a free public library is established under the provision of Montana laws relating to public libraries.

(2) By petition signed by not less than 10% of the resident taxpayers, whose names appear upon the last completed assessment roll of the city or county, being filed with the governing body requesting the establishment of a public library. The governing body of a city or county shall set a time of meeting at which they may by resolution establish a public library. The governing body shall give notice of the contemplated action in a newspaper of general circulation for 2 consecutive weeks giving therein the date and place of the meeting at which the contemplated action is proposed to be taken.

(3) (a) Upon a petition being filed with the governing body and signed by not less than 5% of the resident taxpayers of any city or county requesting an election, the governing body shall submit to a vote of the qualified electors thereof at the next general election the question of whether a free public library shall be established.

(b) If such a petition is submitted for a city, the petition must be signed by resident taxpayers of said city.

(c) If such a petition is submitted to the county commissioners of a county asking for the establishment of a county library, the petition must be signed by resident taxpayers of the county who reside outside the corporate limits of an incorporated city located in said county which may already have established a free public library for such city.

(d) If such petition specifically asks that a special election be called and such petition is signed by 35% of the resident freeholders affected by such petition, then the governing body shall, upon receipt of such petition, immediately set a date for a special election, which date shall be as soon as the procedures for establishing a special election will allow.

(e) If at such election a majority of the electors voting on the question vote in favor of the establishment of a library, the governing body shall immediately take the necessary steps to establish and maintain said library or to contract with any city or county for library service to be rendered to the inhabitants of such city or county.

History: **En. Sec. 2, Ch. 260, L. 1967; amd. Sec. 1, Ch. 263, L. 1969; R.C.M. 1947, 44-219.**

22-1-304. Tax levy — special library fund — bonds. (1) The governing body of any city or county which has established a public library may levy in the same manner and at the same time as other taxes are levied a special tax in the amount necessary to maintain adequate public library service, not to exceed 5 mills on the dollar, upon all property in such county which may be levied by the governing body of such county and not to exceed 7 mills on the dollar upon all property in such city which may be levied by the governing body of such city.

(2) (a) The governing body of any city or county may by resolution submit the question of exceeding the maximum tax levy provided in subsection (1) to a vote of the qualified electors thereof at the next general election. Such resolution must be adopted at least 75 days prior to the general election at which the question will be voted on.

(b) Upon petition being filed with the governing body and signed by not less than 5% of the resident taxpayers of any city or county requesting an election for the purpose of exceeding the maximum mill levy, the governing body shall submit to a vote of the qualified electors thereof at the next general election the question of exceeding the maximum mill levy. Such petition must be delivered to the governing body at least 90 days prior to the general election at which the question will be voted on.

(c) The question shall be submitted by ballots upon which the words "FOR exceeding the ... mill maximum levy and authorizing an additional ... mill(s) for the library" and "AGAINST exceeding the ... mill maximum library levy" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions.

(d) The votes cast for the adoption or rejection of the question must be canvassed, and:

(i) if a majority of the voters voting on the question vote to exceed the maximum mill levy, the governing body shall levy the additional tax for the year in which the vote was taken; or

(ii) if a majority of the voters voting on the question vote to not exceed the maximum mill levy, the maximum mill levy may not be exceeded.

(3) The municipal tax authorized in this section is in addition to all other taxes authorized by law and is not within the all-purpose mill levy established by 7-6-4451 through 7-6-4453.

(4) The proceeds of such tax shall constitute a separate fund called the public library fund and shall not be used for any purpose except those of the public library.

(5) No money shall be paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

(6) Bonds may be issued by the governing body in the manner prescribed by law for the erection and equipment of public library buildings and the purchase of land therefor.

History: **En. Sec. 3, Ch. 260, L. 1967; R.C.M. 1947, 44-220; amd. Sec. 1, Ch. 431, L. 1983; amd. Sec. 39, Ch. 250, L. 1985.**

Cross-References

Deposit of certain revenues in all-purpose fund, 7-6-4133.

Tax exemption for libraries, 15-6-201.

22-1-305. Library depreciation reserve fund authorized. The governing body of any city or county or a combination of city and county in Montana may establish a library depreciation reserve fund for the replacement and acquisition of property, capital improvements, and equipment necessary to maintain and improve city, county, or city-county library services.

History: **En. 44-229 by Sec. 1, Ch. 78, L. 1975; R.C.M. 1947, 44-229.**

22-1-306. Moneys for library depreciation reserve fund. Moneys for the library depreciation reserve fund are those funds which have been allocated to the library in any year but which have not been expended by the end of the year. Such moneys include but are not limited to city or county or city-county appropriations, federal revenue sharing funds, and public and private grants.

History: En. 44-230 by Sec. 2, Ch. 78, L. 1975; R.C.M. 1947, 44-230.

22-1-307. Investment of fund. The moneys held in the library depreciation reserve fund may be invested as provided by law. All interest earned on the fund must be credited to the library depreciation reserve fund.

History: En. 44-231 by Sec. 3, Ch. 78, L. 1975; R.C.M. 1947, 44-231.

22-1-308. Public library — board of trustees. (1) Upon the establishment of a public library under the provisions of this part, the mayor, with the advice and consent of the city council or city commissioners, shall appoint a board of trustees for the city library and the chairman of the board of county commissioners, with the advice and consent of said board, shall appoint a board of trustees for the county library.

(2) The library board shall consist of five trustees. Not more than one member of the governing body shall be, at any one time, a member of such board.

(3) Trustees shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.

(4) Trustees shall hold their office for 5 years from the date of appointment and until their successors are appointed. Initially, appointments shall be made for 1-, 2-, 3-, 4-, and 5-year terms. Annually thereafter, there shall be appointed before July 1 of each year in the same manner as the original appointments for a 5-year term, a trustee to take the place of the retiring trustee. Trustees shall serve no more than two full terms in succession.

(5) Following such appointments, in July of each year, the trustees shall meet and elect a chairman and such other officers as they deem necessary, for 1-year terms. Vacancies in the board of trustees shall be filled for the unexpired term in the same manner as original appointments.

History: En. Sec. 4, Ch. 260, L. 1967; R.C.M. 1947, 44-221.

22-1-309. Trustees — powers and duties. The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

(1) adopt bylaws and rules for its own transaction of business and for the government of the library, not inconsistent with law;

(2) establish and locate a central public library and may establish branches thereof at such places as are deemed necessary;

(3) have the power to contract, including the right to contract with regions, counties, cities, school districts, educational institutions, the state library, and other libraries, to give and receive library service, through the boards of such regions, counties, and cities and the district school boards, and to pay out or receive funds to pay costs of such contracts;

(4) have the power to acquire, by purchase, devise, lease or otherwise, and to own and hold real and personal property in the name of the city or county or both, as the case may be, for the use and purposes of the library and to sell, exchange or otherwise dispose of property real or personal, when no longer required by the library and to insure the real and personal property of the library;

(5) pay necessary expenses of members of the library staff when on business of the library;

(6) prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds, for submission to the appropriate agency of the governing body. A separate budget request shall be submitted for new construction or for capital improvement of existing library property.

(7) make an annual report to the governing body of the city or county on the condition and operation of the library, including a financial statement. The trustees shall also provide for the keeping of such records as shall be required by the Montana state library in its request for an annual report from the public libraries and shall submit such an annual report to the state library.

(8) have the power to accept gifts, grants, donations, devises, or bequests of property, real or personal, from whatever source and to expend or hold, work, and improve the same for the specific purpose of the gift, grant, donation, devise, or bequest. These gifts, grants, donations, devises, and bequests shall be kept separate from regular library funds and are not subject to reversion at the end of the fiscal year.

(9) exercise such other powers, not inconsistent with law, necessary for the effective use and management of the library.

History: Ap. p. Sec. 5, Ch. 260, L. 1967; Sec. 44-222, R.C.M. 1947; Ap. p. Sec. 1, Ch. 47, L. 1927; re-en. Sec. 5668.17, R.C.M. 1935; Sec. 11-1006, R.C.M. 1947; R.C.M. 1947, 11-1006(part), 44-222.

Cross-References

Authorization for governmental and public entities to take property by gift or devise, 7-8-103.

Power to accept gifts, 20-6-601.

Application of other school district provisions, 20-15-403.

22-1-310. Chief librarian — personnel — compensation. The board of trustees of each library shall appoint and set the compensation of the chief librarian who shall serve as the secretary of the board and shall serve at the pleasure of the board. With the recommendation of the chief librarian, the board shall employ and discharge such other persons as may be necessary in the administration of the affairs of the library, fix and pay their salaries and compensation, and prescribe their duties.

History: En. Sec. 6, Ch. 260, L. 1967; R.C.M. 1947, 44-223.

22-1-311. Use of library — privileges. Every library established under the provisions of this part shall be free to the use of the inhabitants of the city or the county supporting such library. The board may exclude from the use of the library any and all persons who shall willfully violate the rules of the library. The board may extend the privileges and use of the library to persons residing outside of the city or county upon such terms and conditions as it may prescribe by its regulations.

History: En. Sec. 7, Ch. 260, L. 1967; R.C.M. 1947, 44-224.

Cross-References

Authority of State Library Commission, 22-1-103.

Depository libraries, 22-1-214.

Contractual control of library use, 22-1-403.

22-1-312. Cooperation and merger. Library boards of trustees, boards of other educational institutions, library agencies, and local political subdivisions are hereby empowered to cooperate, merge, or combine in providing library service.

History: **En. Sec. 8, Ch. 260, L. 1967; R.C.M. 1947, 44-225.**

22-1-313. Existing tax-supported libraries — notification — exemption from county taxes. After the establishment of a county free library as provided in this part, the governing body of any city which has an existing tax-supported public library may notify the board of county commissioners that such city does not desire to be a part of the county library system. Such notification shall exempt the property in such city from liability for taxes for county library purposes.

History: **En. Sec. 9, Ch. 260, L. 1967; R.C.M. 1947, 44-226.**

22-1-314. Continued existence of all public libraries. All public libraries heretofore established shall continue in existence, subject to the changes in administration provided herein.

History: **En. Sec. 12, Ch. 260, L. 1967; R.C.M. 1947, 44-228.**

22-1-315. City library may assume functions of county library. (1) Instead of establishing a separate county free library, the board of county commissioners may enter into a contract with the board of library trustees or other authority in charge of the free public library of any incorporated city, and the board of library trustees or other authority in charge of such free public library is hereby authorized to make such a contract.

(2) Such contract may provide that the free public library of such incorporated city shall assume the functions of a county free library within the county with which such contract is made, and the board of county commissioners may agree to pay out of the county free library fund into the library fund of such incorporated city such sum as may be agreed upon.

(3) Either party to such contract may terminate the same by giving 6 months' notice of intention to do so.

History: **En. Sec. 11, Ch. 45, L. 1915; re-en. Sec. 4573, R.C.M. 1921; re-en. Sec. 4573, R.C.M. 1935; R.C.M. 1947, 44-211.**

Cross-References

Erection and maintenance of county buildings, 7-8-2102.

22-1-316. Joint city-county library. (1) A county and any city or cities within the county, by action of their respective governing bodies, may join in establishing and maintaining a joint city-county library under the terms of a contract agreed upon by all parties.

(2) The expenses of a joint city-county library shall be apportioned between or among the county and cities on such a basis as shall be agreed upon in the contract.

(3) The governing body of any city or county entering into a contract may levy a special tax as provided in 22-1-304 for the establishment and operation of a joint city-county library.

(4) The treasurer of the county or of a participating city within the county, as shall be provided in the contract, shall have custody of the funds of the joint city-county library, and the other treasurers of the county or cities joining in the contract shall transfer quarterly to him all moneys collected for the joint city-county library.

(5) The contract shall provide for the disposition of property upon dissolution of the joint city-county library.

History: **En. Sec. 1, Ch. 273, L. 1973; R.C.M. 1947, 44-219.1.**

Cross-References

Erection and maintenance of county buildings, 7-8-2102.

22-1-317. City-county library — board of trustees. (1) A joint city-county library shall be governed by a board of trustees composed of five members chosen as specified in the contract, with terms not to exceed 5 years.

(2) Trustees shall serve no more than two full terms in succession.

(3) Trustees shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.

(4) Trustees shall meet and elect a chairman and such other officers as they consider necessary for 1-year terms.

(5) The board of trustees shall have the same powers and duties as the board of trustees of a city library or a county library.

History: **En. Sec. 2, Ch. 273, L. 1973; amd. Sec. 3, Ch. 3, L. 1977; R.C.M. 1947, 44-219.2.**

Part 4

Library Systems

22-1-401. Policy. It is the policy of the legislature to encourage the most efficient delivery of library services to the people of Montana. To that end the state should be divided into regions within which libraries desiring to participate in the distribution of such state funding to libraries as may be available from time to time shall organize into library federations to pool resources and information and avoid duplication of effort.

History: **En. Sec. 2, Ch. 215, L. 1965; amd. Sec. 1, Ch. 357, L. 1974; R.C.M. 1947, 44-131(part).**

22-1-402. Library systems — definition. Library systems shall include library federations or library networks, as defined hereafter:

(1) (a) A library federation is a combination of libraries serving a multicounty, multicity, or city-county area within a federation area designated by the state library commission. Any other public library or town, city, or county within the federation area may participate in such a federation.

(b) Two or more cities, towns, counties, or a city and one or more counties may agree by contract to form such a federation by action of their respective governing bodies or duly created boards of library trustees, provided that one of the parties is or maintains a library which has been designated by the state library commission as a headquarters library for that federation area. The participating entities may retain such autonomy over their respective libraries as may be specified in the contract.

(c) The expense of providing library services for the library federation shall be based on funds received from the state or participating libraries as shall be agreed upon in the contract. The funds of the federation shall be maintained as a separate account as shall be provided in the contract. Participating libraries shall transfer semiannually to the account all money collected for the federation in their respective jurisdiction.

(d) A participating entity may withdraw from a federation according to the terms for withdrawal provided in the contract by the action of its governing body or by a majority of its qualified voters voting at a general or special election.

(2) A library network is an agreement between individual libraries or library systems, which may be intercity, intrastate, or interstate, for the exchange of information or to provide specific library services not provided in existing library federations.

History: En. Sec. 1, Ch. 132, L. 1939; amd. Sec. 2, Ch. 357, L. 1974; R.C.M. 1947, 44-212; amd. Sec. 1, Ch. 374, L. 1981.

22-1-403. Participation in the federation. (1) When a library federation shall have been established, the legislative body of any government unit in the designated library federation area may decide, with the concurrence of the board of trustees of its library if it is maintaining a library, to participate in the library federation. Each local entity may determine the amount of services it wishes to supply to fulfill the needs of its unit. After the necessary contract has been executed and beginning with the next fiscal year, the governmental unit shall participate in the library federation and its residents shall be entitled to the benefits of the library federation and property within its boundaries shall be subject to taxation for library federation purposes.

(2) The board of regents of higher education may contract with the government of any city or county, or the governments of both the city and the county, in which a unit of the Montana university system is located for the establishment and operation of joint library services. Any such contract which proposes the erection of a building shall be subject to the approval of the legislature. Any joint library services established pursuant to this section shall be operated and supported as provided in such contract and under this part.

History: En. Sec. 2, Ch. 132, L. 1939; amd. Sec. 1, Ch. 249, L. 1963; amd. Sec. 3, Ch. 357, L. 1974; R.C.M. 1947, 44-213.

22-1-404. Board of trustees — coordinator. (1) In a library federation there shall be a board of trustees with advisory powers only, the operation of the library federation having been specified by contract. The board of trustees of each participating library shall name one of their members to the federation advisory board of trustees, and each participating entity without a duly appointed library board shall name a layman to represent that entity on the library federation board of trustees.

(2) The librarian of the headquarters library shall serve as the coordinator of the federation and as a nonvoting member of the federation advisory board of trustees.

History: (1)En. Sec. 3, Ch. 132, L. 1939; amd. Sec. 10, Ch. 260, L. 1967; amd. Sec. 4, Ch. 357, L. 1974; Sec. 44-214, R.C.M. 1947; (2)En. Sec. 2, Ch. 215, L. 1965; amd. Sec. 1, Ch. 357, L. 1974; Sec. 44-131, R.C.M. 1947; R.C.M. 1947, 44-131(part), 44-214.

22-1-405. Boards of trustees — authority — resolution of disagreements. (1) The board of trustees of a library federation shall act as an advisor to the participating libraries and their boards of trustees.

(2) Control over the budgets and administrative policies of participating libraries shall remain in their boards of trustees as provided in 22-1-309.

(3) Any disagreement among participants in a library federation regarding the apportionment of funds or grants received from the state library commission shall be resolved by the state library commission.

History: En. 44-214.1 by Sec. 5, Ch. 357, L. 1974; R.C.M. 1947, 44-214.1.

22-1-406 through 22-1-410 reserved.

22-1-411. Repealed. Sec. 1, Ch. 355, L. 1981.

History: En. Sec. 4, Ch. 132, L. 1939; amd. Sec. 6, Ch. 357, L. 1974; R.C.M. 1947, 44-215.

22-1-412. Purpose. It is the purpose of 22-1-412 and 22-1-413 to establish a program whereby state funds may be appropriated to the Montana state library commission to provide the benefits of quality public library service to all residents of Montana by developing and strengthening local public libraries through library federations as defined in 22-1-402.

History: En. 44-304 by Sec. 1, Ch. 416, L. 1975; R.C.M. 1947, 44-304; amd. Sec. 1, Ch. 373, L. 1981.

22-1-413. Administration by Montana state library commission. The Montana state library commission shall receive and administer the appropriation for state funding to public library federations. The commission shall allocate such appropriation among such types of grant programs and shall allocate funds among federations according to such formulas for distribution as it shall establish from time to time by rules adopted pursuant to 22-1-103. Federations receiving state funds from the commission shall report semiannually to the commission concerning the progress of the various projects for which state funding was received, which reports shall contain an accounting for all state funds received.

History: En. 44-305 by Sec. 2, Ch. 416, L. 1975; R.C.M. 1947, 44-305; amd. Sec. 2, Ch. 373, L. 1981.

22-1-414 through 22-1-416. Repealed. Sec. 3, Ch. 373, L. 1981.

Compiler's Comments

Histories of Repealed Sections: **22-1-414 through 22-1-416.** En. Secs. 3, 4, 5, Ch. 416, L. 1975; R.C.M. 1947, 44-306, 44-307, 44-308.

Part 5

Law Library

Part Cross-References

Distribution of Administrative Rules of Montana to law library, 2-4-313.

Distribution of reports of Supreme Court decisions, 3-2-604.

22-1-501. State law library created. The library heretofore known as a department of the state library of Montana and called "the law library" shall become a separate and distinct library designated the "state law library of the state of Montana". The collections of laws, decisions of courts, law reports, textbooks, legal periodicals, and miscellaneous books and journals together with pamphlets, papers, maps, charts, and manuscripts now in the law library in the capitol building or belonging to such law library or hereafter acquired by or donated to the law library shall constitute the library hereby established, and the title to all of the property constituting the same now or hereafter shall be in the state of Montana, subject to the custody and control of the library board established herein.

History: **En. Sec. 1, Ch. 153, L. 1949; R.C.M. 1947, 44-401.**

22-1-502. Location — control by board of trustees. The state law library of the state of Montana shall be located in Helena, Montana, and shall be in the immediate custody and subject to the control of a board of trustees consisting of the chief justice and the justices of the supreme court of the state of Montana.

History: **En. Sec. 2, Ch. 153, L. 1949; amd. Sec. 1, Ch. 142, L. 1977; R.C.M. 1947, 44-402; amd. Sec. 1, Ch. 252, L. 1981.**

Cross-References

Supreme Court created, Art. VII, sec. 1 through 3, Mont. Const.

22-1-503. Authority of board. The powers and duties of said board are as follows:

(1) to make rules, not inconsistent with law, for the government of the board and for the government and administration of the state law library, including rules designating when and for what periods of time the library shall be open to the public and the office hours of the library;

(2) to appoint a librarian and prescribe the duties of such librarian when not otherwise provided for by law;

(3) to sell or exchange duplicate copies of books and pay the moneys arising therefrom into the state law library fund;

(4) to see that the books and other properties of the library are maintained in good order and repair and are protected from theft or injury;

(5) to draw from the state treasury, at any time when needed for the legitimate expenses in maintaining and operating the library and acquiring books, reports, journals, and other works and properties therefor, including complete sets of statutory laws and codified laws of the United States of America, of the several states of the union, and of other jurisdictions, any moneys in the fund and available for such purposes;

(6) to establish such lawful relations and working arrangements with the library of congress of the United States, with the copyright office therein, and with the superintendent of documents of the United States as may be for the benefit and advantage of the state law library and promote the acquisition of books and other works from such sources as may be useful to those resorting to the facilities of the state law library.

History: **En. Sec. 3, Ch. 153, L. 1949; amd. Sec. 14, Ch. 93, L. 1969; R.C.M. 1947, 44-403; amd. Sec. 8, Ch. 125, L. 1983.**

22-1-504. Duties of librarian. The librarian shall develop and maintain an adequate collection and services to fulfill the needs of library users and shall establish procedures for the maintenance and control of the collection.

History: **En. Sec. 5, Ch. 153, L. 1949; amd. Sec. 2, Ch. 142, L. 1977; R.C.M. 1947, 44-405(2).**

22-1-505. Use of library. The state law library shall be maintained and operated for the use of the members of the supreme court, the members of the legislature, the several officers of the senate and of the house of representatives, for state officers and employees, for members of the bar of the supreme court of Montana, for members of the bar of supreme courts of other states while in attendance before the supreme court of Montana, and members of the general public agreeing to the rules established by the librarian.

History: **En. Sec. 5, Ch. 153, L. 1949; amd. Sec. 2, Ch. 142, L. 1977; R.C.M. 1947, 44-405(1).**

22-1-506. Liability for injury to books or failure to return. Every person who defaces, tears, or otherwise injures any book or other work or who fails to return any book taken by him is liable to the state in three times the value thereof if such book is not replaced by a new one or another book of identical title, in good order and condition; and no statute of limitations shall ever be effective against the claim of the state under this section.

History: **En. Sec. 6, Ch. 153, L. 1949; R.C.M. 1947, 44-406.**

Part 6

Interstate Library Compact

22-1-601. Library compact. The Interstate Library Compact is hereby approved, enacted into law, and entered into by the state of Montana, which compact is in full as follows:

INTERSTATE LIBRARY COMPACT

Article I. Policy and Purpose

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the states party to this compact to cooperate and share their responsibilities; to authorize cooperation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a cooperative basis; and to authorize cooperation and sharing among localities, states, and others in providing joint or cooperative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

Article II. Definitions

As used in this compact:

(1) "public library agency" means any unit or agency of local or state government operating or having power to operate a library;

(2) "private library agency" means any nongovernmental entity which operates or assumes a legal obligation to operate a library;

(3) "library agreement" means a contract establishing an interstate library district pursuant to this compact or providing for the joint or cooperative furnishing of library services.

Article III. Interstate Library Districts

(1) Any one or more public library agencies in a party state in cooperation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain, and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may cooperate therewith, assume duties, responsibilities, and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.

(2) Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or cooperative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

(3) If a library agreement provides for joint establishment, maintenance, or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:

(a) undertake, administer, and participate in programs or arrangements for:

(i) securing, lending, or servicing books and other publications, any other materials suitable to be kept or made available by libraries, or library equipment; or

(ii) for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof;

(b) accept for any of its purposes under this compact any and all donations and grants of money, equipment, supplies, materials, and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof or interstate agency or from any institution, person, firm, or corporation and receive, utilize, and dispose of the same;

(c) operate mobile library units or equipment for the purpose of rendering bookmobile service within the district;

(d) employ professional, technical, clerical, and other personnel and fix terms of employment, compensation, and other appropriate benefits; and where desirable, provide for the in-service training of such personnel;

(e) sue and be sued in any court of competent jurisdiction;

(f) acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service;

(g) construct, maintain, and operate a library, including any appropriate branches thereof;

(h) do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

Article IV. Interstate Library Districts, Governing Board

(1) An interstate library district which establishes, maintains, or operates any facilities or services in its own right shall have a governing board which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district shall be represented on the governing board which shall be organized and conduct its business in accordance with provision therefor in the library agreement. But in no event shall a governing board meet less often than twice a year.

(2) Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

Article V. State Library Agency Cooperation

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or cooperative library programs, render joint or cooperative library services, and enter into and perform arrangements for the cooperative or joint acquisition, use, housing, and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services, or arrangements may include provision for the exercise on a cooperative or joint basis of any power exercisable by an interstate library district, and an agreement embodying any such program, service, or arrangement shall contain provisions covering the subjects detailed in Article VI of this compact for interstate library agreements.

Article VI. Library Agreements

(1) In order to provide for any joint or cooperative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact shall, as among the parties to the agreement:

(a) detail the specific nature of the services, programs, facilities, arrangements, or properties to which it is applicable;

(b) provide for the allocation of costs and other financial responsibilities;

(c) specify the respective rights, duties, obligations, and liabilities of the parties;

(d) set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.

(2) No public or private library agency shall undertake to exercise, itself or jointly with any other library agency, by means of a library agreement, any power prohibited to such agency by the constitution or statutes of its state.

(3) No library agreement shall become effective until filed with the compact administrator of each state involved and approved in accordance with Article VII of this compact.

Article VII. Approval of Library Agreements

(1) Every library agreement made pursuant to this compact shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of his state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within 90 days of its submission shall constitute approval thereof.

(2) In the event that a library agreement made pursuant to this compact shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to paragraph (1) of this article. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

Article VIII. Other Laws Applicable

Nothing in this compact or in any library agreement shall be construed to supersede, alter, or otherwise impair any obligation imposed on any library by otherwise applicable law nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.

Article IX. Appropriations and Aid

(1) Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.

(2) Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

Article X. Compact Administrator

Each state shall designate a compact administrator with whom copies of all library agreements to which his state or any public library agency thereof is party shall be filed. The administrator shall have such other powers as may be conferred upon him by the laws of his state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

Article XI. Entry into Force and Withdrawal

(1) This compact shall enter into force and effect immediately upon its enactment into law by any two states. Thereafter, it shall enter into force and effect as to any other state upon the enactment thereof by such state.

(2) This compact shall continue in force with respect to a party state and remain binding upon such state until 6 months after such state has given notice to each other party state of the repeal thereof. Such withdrawal shall not be construed to relieve any party to a library agreement entered into pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

Article XII. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 119, L. 1967; R.C.M. 1947, 44-601.

22-1-602. Executive officer of state library commission as administrator. The executive officer of the state library commission shall be the compact administrator of the Interstate Library Compact.

History: En. Sec. 2, Ch. 119, L. 1967; R.C.M. 1947, 44-602.

Cross-References

State librarian as executive officer, 22-1-102.

Parts 7 through 10 reserved

Part 11

Library Records Confidentiality Act

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

22-1-1101. Short title. This part may be cited as the "Montana Library Records Confidentiality Act".

History: En. Sec. 1, Ch. 476, L. 1985.

22-1-1102. Definitions. As used in 22-1-1103, the following definitions apply:

(1) "Library" means a library that is established by the state, a county, city, town, school district, or a combination of those units of government, a college or university, or any private library open to the public.

(2) "Library records" means any document, record, or any other method of storing information retained, received, or generated by a library that identifies a person as having requested, used, or borrowed library material or other records identifying the names or other personal identifiers of library users. Library records does not include nonidentifying material that may be retained for the purpose of studying or evaluating the circulation of library materials in general or records that are not retained or retrieved by personal identifier.

History: **En. Sec. 2, Ch. 476, L. 1985.**

22-1-1103. Nondisclosure of library records. (1) No person may release or disclose a library record or portion of a library record to any person except in response to:

(a) a written request of the person identified in that record, according to procedures and forms giving written consent as determined by the library; or

(b) an order issued by a court of competent jurisdiction, upon a finding that the disclosure of such record is necessary because the merits of public disclosure clearly exceed the demand for individual privacy.

(2) A library is not prevented from publishing or making available to the public reasonable statistical reports regarding library registration and book circulation if those reports are presented so that no individual is identified therein.

(3) Library records may be disclosed to the extent necessary to return overdue or stolen materials or collect fines.

History: **En. Sec. 3, Ch. 476, L. 1985.**

Cross-References

Citizens entitled to inspect and copy public writings, 2-6-102.

Public records management, Title 2, ch. 6, part 2.

22-1-1104 through 22-1-1110 reserved.

22-1-1111. Penalty. Any person who violates 22-1-1103 is guilty of a misdemeanor and is liable to the person identified in a record that is improperly released or disclosed. The person identified may bring a civil action for actual damages or $100, whichever is greater. Reasonable attorney fees and the costs of bringing the action may be awarded to the prevailing party.

History: **En. Sec. 6, Ch. 476, L. 1985.**

Cross-References

Costs of actions, Title 25, ch. 10.

CHAPTER 2

ARTS

Part 1 — Montana Arts Council

22-2-101. Montana arts council established.
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Part 4 — Art for State Buildings

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Art galleries' tax exemption, 15-6-201.

State art galleries to be operated by the State Historical Society, 22-3-101.

Part 1

Montana Arts Council

Part Cross-References

Agencies allocated to the State Board of Education, 2-15-1511.

Artwork for waterfowl stamps, 87-2-412.

22-2-101. Montana arts council established. In recognition of the increasing importance of the arts in the lives of the citizens of Montana, of the need to provide opportunity for our young people to participate in the arts and to contribute to the great cultural heritage of our state and nation, and of the growing significance of the arts as an element which makes living and vacationing in Montana desirable to the people of other states, the Montana arts council is hereby created as an agency of state government.

History: **En. Sec. 1, Ch. 2, L. 1967; R.C.M. 1947, 82-3601.**

22-2-102. Membership of council — appointment. The Montana arts council shall consist of 15 members appointed by the governor, by and with the consent of the senate. Insofar as possible, the governor shall appoint members from the various geographical areas of the state who have a keen interest in one or more of the arts and a willingness to devote time and effort in the public interest without compensation.

History: **En. Sec. 2, Ch. 2, L. 1967; R.C.M. 1947, 82-3602.**

22-2-103. Council membership — tenure — compensation. The term of office of each member shall be 5 years; provided, however, that of the members first appointed, five shall be appointed for terms of 1 year, five for terms of 3 years, and five for terms of 5 years. The governor shall designate a chairman and a vice-chairman from the members of the council to serve as such at the pleasure of the governor. The chairman shall be the chief executive officer of the council. Each vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. The members of the council shall not receive any compensation for their services but shall be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred in the performance of their duties as members of the council.

History: **En. Sec. 3, Ch. 2, L. 1967; amd. Sec. 10, Ch. 51, L. 1974; amd. Sec. 55, Ch. 439, L. 1975; R.C.M. 1947, 82-3603.**

22-2-104. Executive committee. The council may select an executive committee of five members and delegate to the committee such functions in aid of the efficient administration of the affairs of the council as the council deems advisable.

History: **En. Sec. 4, Ch. 2, L. 1967; R.C.M. 1947, 82-3604.**

22-2-105. Administrative officers and employees — compensation. The council may employ, and at pleasure remove, administrative officers and other employees as may be needed and fix their compensation within the amounts made available for such purposes.

History: **En. Sec. 5, Ch. 2, L. 1967; amd. Sec. 11, Ch. 51, L. 1974; R.C.M. 1947, 82-3605.**

22-2-106. Council duties. The duties of the council shall be to:

(1) encourage throughout the state the study and presentation of the arts and stimulate public interest and participation therein;

(2) cooperate with public and private institutions engaged within the state in artistic and cultural activities, including but not limited to music, theater, dance, painting, sculpture, architecture, and allied arts and crafts, and make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state;

(3) foster public interest in the cultural heritage of our state and expand the state's cultural resources;

(4) encourage and assist freedom of artistic expression essential for the well-being of the arts.

History: En. Sec. 6, Ch. 2, L. 1967; amd. Sec. 39, Ch. 93, L. 1969; R.C.M. 1947, 82-3606; amd. Sec. 9, Ch. 125, L. 1983.

22-2-107. Gifts and donations. The council may acquire, accept, receive, dispose of, and administer in the name of the council any gifts, donations, properties, securities, bequests, and legacies that may be made to it. Moneys received by donation, gift, bequest, or legacy, unless otherwise provided by the donor, shall be deposited in the state special revenue fund of the state treasury and used for the general operation of the council. The council is the official agency of the state to receive and disburse any funds made available by the national foundation on the arts.

History: En. Sec. 7, Ch. 2, L. 1967; amd. Sec. 11, Ch. 3, L. 1977; R.C.M. 1947, 82-3607; amd. Sec. 1, Ch. 277, L. 1983.

22-2-108. Authorization for council to enter certain contracts. The council may contract with individuals, organizations, and institutions for services or cooperative endeavors furthering the objectives of the council's programs.

History: En. Sec. 8, Ch. 2, L. 1967; R.C.M. 1947, 82-3608.

22-2-109. Financing of council. The council may engage in such fundraising drives and public contribution campaigns as will contribute to its continued development and support. All revenues received in such manner shall be deposited in the state special revenue fund of the state treasury and may not be used for any purposes other than the improvement, development, and operation and programs of the council.

History: En. Sec. 9, Ch. 2, L. 1967; R.C.M. 1947, 82-3609; amd. Sec. 1, Ch. 277, L. 1983.

Part 2

Montana Folklife Project (Expired July 1, 1983. Sec. 1, Ch. 473, L. 1981)

Part Compiler's Comments
Histories of Expired Sections: **22-2-201 through 22-2-205.** En. Secs. 1 through 5, Ch. 531, L. 1979.

Part 3

Cultural and Aesthetic Projects

22-2-301. Cultural and aesthetic projects grants. (1) Any person, association, or representative of a governing unit seeking a grant for a cultural or aesthetic project from the income of the trust fund created in 15-35-108 must submit a grant proposal to the cultural and aesthetic projects advisory committee, in care of the Montana historical society, by September 1 of the year preceding the convening of a regular legislative session.

(2) Grant proposals must be for the purpose of protecting works of art in the state capitol or other cultural and aesthetic projects.

History: En. Sec. 2, Ch. 653, L. 1979; amd. Sec. 1, Ch. 99, L. 1983; Sec. 22-3-112, MCA 1981; redes. 22-2-301 by Code Commissioner, 1983.

22-2-302. Advisory committee — powers and duties. (1) The cultural and aesthetic projects advisory committee provided for in 2-15-1521 shall review all proposals for cultural and aesthetic project grants before they are submitted to the legislature.

(2) Consistent with the rules adopted in accordance with 22-2-303, the committee shall make recommendations to the legislature on each proposal submitted to the committee.

(3) The committee's recommendations to the legislature are advisory only.

(4) The committee shall present its recommendations to the appropriations committee of the legislature by the 15th day of any regular legislative session.

History: En. Sec. 3, Ch. 99, L. 1983.

22-2-303. Rulemaking authority. (1) The Montana historical society and the Montana arts council shall adopt rules that specify the criteria the advisory committee shall use when evaluating and making recommendations on cultural and aesthetic grant proposals submitted to the legislature.

(2) The Montana arts council shall adopt rules that implement the provisions of 22-2-306, 22-2-308, and 22-2-309, relating to local support, matching requirements, application procedures, and disbursements of grants.

History: En. Sec. 5, Ch. 99, L. 1983; amd. Sec. 4, Ch. 732, L. 1985.

Cross-References

Adoption of rules — Montana Administrative Procedure Act, Title 2, ch. 4.

22-2-304. Cultural and aesthetic project appropriations — administration. (1) The legislature must appropriate funds from the income of the trust fund created in 15-35-108(3)(f) before any grant for a cultural or aesthetic project is awarded.

(2) Costs incurred by the Montana arts council for accounting, correspondence, project visits, and solicitation of proposals related to cultural and aesthetic project grants and the costs of the advisory committee established in 2-15-1521 shall be paid from appropriations from the income of the trust fund.

(3) Grant proposals are heard by a legislative appropriations subcommittee.

(4) Grant proposals approved by the legislature are administered by the Montana arts council.

History: En. Sec. 4, Ch. 99, L. 1983; amd. Sec. 1, Ch. 13, L. 1985.

22-2-305. Allocation and disbursement of funds. (1) The Montana arts council shall allocate and disburse cultural and aesthetic project account funds as appropriated by the legislature.

(2) If the funds in the cultural and aesthetic projects account are insufficient to fund projects in the amount of the legislative appropriation for the projects, the council shall allocate and disburse the account's funds in accordance with the provisions of the appropriation act.

History: En. Sec. 2, Ch. 688, L. 1983; amd. Sec. 1, Ch. 315, L. 1987.

Compiler's Comments

1987 Amendment: At end of (2), after "funds", substituted "in accordance with the provisions of the appropriation act" for "as follows:

(a) Projects of an ongoing nature during the full course of the grant period must receive the first priority for allocation of account funds. For purposes of this section, "ongoing project" means a project designed to operate throughout the grant period with a full-time staff and obligations to be met monthly.

(b) All other projects must be allocated the remaining funds on a percentage basis. The percentage must be determined for each such project by dividing the amount appropriated for each such project by the total amount appropriated for all such projects."

22-2-306. Grant conditions — additional funds — accounts and reports. (1) No grant may be awarded unless the grantee accepts the Montana arts council's conditions of the grant and signs a contract stipulating those conditions.

(2) A grantee must agree in writing that:

(a) the grantee is the official and sole agency for the administration of the project described in the grant agreement; and

(b) no person will, on the grounds of race, color, national origin, sex, or age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that results from the expenditure of grant funds.

(3) The grantee must agree that the funds granted will be expended solely for the purpose and activities described in the approved proposal. All funds granted to the grantee must be spent or encumbered during the grant period.

(4) Disbursements to grantees must be as follows, based upon the cash flow needs of the projects and the revenues available:

(a) Projects that are to receive more than $10,000 may receive an amount not exceeding 25% of the grant award in the first 6 months of the biennium, 50% in the first year of the biennium, 75% in the first 18 months of the biennium, and the balance in the remainder of the biennium. Within such limitations, the amount of each payment must be determined by the Montana arts council in its discretion. Each payment may be made only after an examination of the costs incurred in the project and the amount, if any, of the unencumbered or unexpended balance of prior grant payments for the project.

(b) Projects that are to receive $10,000 or less may receive the total grant in any fiscal quarter if the Montana arts council determines that the cultural and aesthetic project account has funds available and that, after an examination of the costs incurred by the project, total payment is appropriate.

(c) A grant award budget may be modified in accordance with this subsection. A grantee may modify line items in an approved budget in an amount not to exceed 10% of the total grant award. A grantee may, with permission of the Montana arts council, modify line items in an approved budget in an amount not to exceed 20% of the total grant award. No such modification may increase the grant award or change the scope or purpose of the award.

(5) The grantee must maintain accounts, records, and other pertinent material pertaining to the costs incurred and expenditures made under the grant. The system of accounting employed by the grantee must be in accordance with generally accepted accounting principles and be applied in a consistent manner so that project costs and expenditures can be clearly identified. Accounts, records, and other pertinent material must be maintained for 3 years from the official termination date of the grant period or until an audit, approved by the council, has been completed and any questions arising from the audit have been resolved to the satisfaction of the council.

(6) Grantees must submit to the council semiannual reports of expenditures during the course of the project and such other financial and descriptive

reports as the council may require. The grantee must submit, within 30 days after completion of the project, a final financial report and a narrative report stating what was accomplished with the grant. Five percent of the total grant award must be held pending receipt of final reports by the council.

(7) The council may, at the principal place of business of the grantee and during regular business hours, examine any directly pertinent records, accounts, and documents of the grantee involving transactions related to the grant.

History: En. Sec. 1, Ch. 688, L. 1983; amd. Sec. 3, Ch. 732, L. 1985; amd. Sec. 2, Ch. 315, L. 1987.

Compiler's Comments

1987 Amendment: Inserted (4)(c).

Cross-References

Nondiscrimination by state, 49-2-308.

22-2-307. Renumbered 22-2-321 by Code Commissioner, 1985.

22-2-308. Application procedure — grant criteria. (1) As set forth in subsections (1)(a) and (1)(b), certain grants require local financial or in-kind support. The grant application form, which must be prescribed by the Montana arts council, must request specific information about the level of local support for the project. In the following circumstances, local support is required:

(a) To receive cultural and aesthetic grant funds, county or municipally owned facilities must obtain financial and in-kind support from their respective local governments.

(b) To receive grant funding for all grants except the first grant from the cultural and aesthetic grant program, private museums, art centers, and cultural facilities must obtain county or municipal financial or in-kind support.

(2) An applicant for a historic preservation project must cooperate with the state historic preservation office. A letter from the state historic preservation office, stating any agreements reached with the applicant, must be received by the Montana arts council before the grant funds may be released.

History: En. Sec. 1, Ch. 732, L. 1985.

22-2-309. Grant categories. (1) The following categories are established for grant funds:

(a) special projects which are specific cultural and aesthetic activities, services, or events of limited duration;

(b) operational support for cultural institutions that have been in existence for at least 2 years and whose budgets reflect only the cost of continuing their current program;

(c) capital expenditures for acquisition, construction, or renovation of facilities; and

(d) challenge grants for permanent endowments to benefit cultural nonprofit grant recipients.

(2) The Montana arts council may require a match in cash or donated services for special project and operational support grants. There is a presumption that the match must represent $1 in value for each dollar of the grant. The Montana arts council may accept matches in excess of the presumed value or may in its discretion require a lesser amount.

(3) Capital expenditures may not exceed 25% of the total grant funds appropriated. Capital expenditure grants require a match of at least $3 in

cash or donated goods and services, which goods and services must be donated specifically for the capital expenditure project, to receive each dollar of grant funds.

(4) Challenge grants require a match of at least $3 in cash or irrevocable planned or deferred gifts to receive each dollar of grant funds. Challenge grants are available upon meeting the specified match. Not less than one-third of the specified match must be in cash. Not more than one-third of the match may be in wills, devises, and bequests.

History: **En. Sec. 2, Ch. 732, L. 1985; amd. Sec. 3, Ch. 315, L. 1987.**

Compiler's Comments

1987 Amendment: At end of (1)(b), after "2 years", inserted remainder of subsection referring to budgets; inserted (2); and at end of (4) inserted last two sentences referring to match in form of cash, wills, devises, and bequests.

22-2-310 through 22-2-320 reserved.

22-2-321. Reversion of granted funds. At the end of a grant period, any unexpended balance of the grant shall revert to the cultural and aesthetic projects account provided for in 15-35-108.

History: **En. Sec. 3, Ch. 688, L. 1983; Sec. 22-2-307, MCA 1983; redes. 22-2-321 by Code Commissioner, 1985.**

Part 4

Art for State Buildings

22-2-401. Short title. This part may be cited as the "Percent-for-Art Act".

History: **En. Sec. 1, Ch. 552, L. 1983.**

22-2-402. Purpose. The state of Montana, in recognition of its responsibility to create a more humane environment of distinction, enjoyment, and pride for all its citizens and in recognition that public art is a resource that stimulates the vitality and economy of the state's communities and provides opportunity for artists and other skilled workers to practice their crafts, declares that a portion of the funds for the construction or renovation of appropriate state buildings be allocated for the acquisition of works of art for such buildings.

History: **En. Sec. 2, Ch. 552, L. 1983.**

22-2-403. Definitions. As used in this part, the following definitions apply:

(1) "Artist" means a practitioner in the visual arts generally recognized by his peers or critics as a professional who produces works of art. The term does not include the project architect, or any member of his firm, of a new state building that is to have works of art under the provisions of this part.

(2) "New state building" means any structure to be built, remodeled, or renovated with money appropriated by the legislature that is, in the opinion of the architecture and engineering division of the department of administration, appropriate for the inclusion of works of art.

(3) "Work of art" means any work of visual art, including but not limited to a drawing, painting, mural, fresco, sculpture, mosaic, photograph, work of

calligraphy, work of graphic art (including an etching, lithograph, offset print, or silk screen), craft (including crafts in clay, textile, fiber, wood, metal, plastic, or glass), or mixed media (including a collage, assemblage, or any combination of art media). The term does not include environmental landscaping.

History: **En. Sec. 3, Ch. 552, L. 1983.**

22-2-404. Art for new state buildings — finance. (1) Subject to legislative allocations as provided in subsection (2), all capital project appropriations by the legislature shall include, as a part of the appropriation, an amount not to exceed 1% of the amount appropriated for the use of the Montana arts council for the acquisition of works of art for new state buildings, maintenance of works of art, and administration of this part as provided in subsection (3).

(2) (a) If a state building recommended for construction in the report required by Title 17, chapter 7, part 2, is also recommended as appropriate for the inclusion of works of art as provided in 22-2-403(2), the report shall so state, and in addition the report shall include any recommendation made by the Montana arts council concerning the appropriateness of the building for the inclusion of works of art, the types of works of art suggested for inclusion in such building, and the anticipated cost of such suggested works of art, including costs of acquisition, maintenance, and administrative expenses associated with the suggested works of art. The Montana arts council may submit a recommendation even if the architecture and engineering division of the department of administration has determined that a structure is not appropriate for inclusion of works of art.

(b) The legislature may, for those buildings recommended as appropriate for the inclusion of works of art, allocate an amount not to exceed 1% of the appropriated cost for use as specified in subsection (1).

(c) Additional funds, including separate appropriations, donations, grants, and other available governmental funds, may be used for the acquisition of works of art for new state buildings.

(3) (a) One percent of the funds received from the maximum appropriation setoff allocated by the legislature must be granted to the Montana arts council for the maintenance of art in state buildings.

(b) The administration of this part may be funded out of the appropriation setoff allocated by the legislature.

History: **En. Sec. 4, Ch. 552, L. 1983.**

22-2-405. Display of works of art. The works of art acquired under the provisions of this part may be an integral part of or attached to the new state building or may be displayed on the parcel of land on which the new state building is located. The works of art must be so located that they are in public view.

History: **En. Sec. 5, Ch. 552, L. 1983.**

22-2-406. Administration — selection of works of art. (1) The Montana arts council is primarily responsible for the administration of this part. The council must:

(a) submit its recommendations to the architecture and engineering division of the department of administration for inclusion in the report required by Title 17, chapter 7, part 2, concerning the appropriateness of any such building for the inclusion of works of art, a description of the types of works of art suggested for inclusion in the building, and the anticipated costs of acquisition, maintenance, and administrative expenses associated with the suggested works of art.

(b) appoint a three-member screening committee for each new state building to recommend artists to be commissioned or completed works of art to be purchased. The committee must consist of the project architect or his designee, a professional artist, and a representative from the user agency who is a resident of the community in which the new state building is to be constructed.

(c) select; commission the artist for; review the design, execution, and placement of; and finally accept all works of art. The Montana arts council must consult with the screening committee in fulfilling the requirements of this subsection (1)(c).

(d) assist in contract negotiations with artists who are selected;

(e) ensure that works of art acquired for display under the provisions of this part are displayed in such a manner that they are in public view;

(f) ensure that each work of art is properly maintained and may use the funds provided for in 22-2-404 or any other funds available for such maintenance; and

(g) maintain a close working relationship with the artist throughout each project.

(2) No payment may be made to any artist for works of art under this part without prior authorization of the Montana arts council.

History: En. Sec. 6, Ch. 552, L. 1983.

22-2-407. State ownership of work of art. The state must obtain sole ownership of each work of art acquired for display under this part, including all tangible rights and privileges, subject to the artist's right to claim authorship of the work of art.

History: En. Sec. 7, Ch. 552, L. 1983.

22-2-408. Part not exclusive. The provisions of this part are not the exclusive manner of acquiring and displaying works of art in public buildings.

History: En. Sec. 8, Ch. 552, L. 1983.

Part 5

Sale of Fine Art by Art Dealer

Part Cross-References

Consignment sales by commission merchants, Title 30, ch. 11, part 4.

Rights of artists in products of the mind, 30-13-131, 30-13-133 through 30-13-135.

Rights and responsibilities of parties in trust relationship, Title 72, ch. 20.

22-2-501. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Art dealer" means a person engaged in the business of selling works of fine art, other than a person exclusively engaged in the business of selling goods at public auction.

(2) "Artist" means a person who creates a work of fine art or, if the person is deceased, the person's heir, devisee, or personal representative.

(3) "Consignment" means that no title to, estate in, or right to possession of fine art superior to that of the consignor vests in the consignee, notwithstanding the consignee's power or authority to transfer and convey to a third person all of the right, title, and interest of the consignor in and to such fine art.

(4) "Fine art" means a painting, sculpture, drawing, work of graphic art (including an etching, lithograph, signed limited edition offset print, silk screen, or a work of graphic art of like nature), a work of calligraphy, photographs, original works in ceramics, wood, metals, glass, plastic, wax, stone, or leather, or a work in mixed media (including a collage, assemblage, or any combination of the art media mentioned in this subsection).

(5) "Person" means an individual, partnership, corporation, association, or other group, however organized.

History: En. Sec. 1, Ch. 534, L. 1985.

22-2-502. Artist-art dealer relationship. Notwithstanding any custom, practice, or usage of the trade to the contrary, whenever an artist delivers or causes to be delivered a work of fine art of the artist's own creation to an art dealer in this state for the purpose of exhibition and sale on a commission, fee, or other basis of compensation, the delivery to and acceptance of such work of fine art by the dealer constitutes a consignment, unless the delivery to the art dealer is pursuant to an outright sale for which the artist receives upon delivery or has received prior to delivery full compensation for the work of fine art.

History: En. Sec. 2, Ch. 534, L. 1985.

22-2-503. Agency relationship — trust property. A consignment of a work of fine art results in the following:

(1) The art dealer, after delivery of the work of fine art, is an agent of the artist for the purpose of sale or exhibition of the consigned work of fine art within the state of Montana. This relationship must be defined in writing and renewed at least every 3 years by the art dealer and the artist. It is the responsibility of the artist to identify clearly the work of art by securely attaching identifying marking to or clearly signing the work of art.

(2) The work of fine art constitutes property held in trust by the consignee for the benefit of the consignor and is not subject to claim by a creditor of the consignee.

(3) The consignee is responsible for the loss of or damage to the work of fine art while in the possession of or on the premises of the consignee.

(4) The proceeds from the sale of the work of fine art constitute funds held in trust by the consignee for the benefit of the consignor. The proceeds must first be applied to pay any balance due to the consignor, unless the consignor expressly agrees otherwise in writing.

History: En. Sec. 3, Ch. 534, L. 1985.

Cross-References

Law of agency, Title 28, ch. 10.

Consignment sales by commission merchants, Title 30, ch. 11, part 4.

Ownership of art as product of the mind, 30-13-131.

Rights and responsibilities of parties in trust relationship, Title 72, ch. 20.

22-2-504. Subsequent sale — payment to consignor. A work of fine art received as a consignment remains trust property, notwithstanding the subsequent purchase thereof by the consignee directly or indirectly for the consignee's own account, until the price is paid in full to the consignor. If the work is resold to a bona fide purchaser before the consignor has been paid in full, the proceeds of the resale received by the consignee constitute funds held in trust for the benefit of the consignor to the extent necessary to pay any balance due to the consignor and the trusteeship continues until the fiduciary obligation of the consignee with respect to the transaction is discharged in full.

History: **En. Sec. 4, Ch. 534, L. 1985.**

22-2-505. Waiver void — exemption from U.C.C. (1) Any provision of a contract or agreement by which the consignor waives any provision of this part is void.

(2) This part is not subject to the provisions of Title 30, chapters 1 through 9.

History: **En. Sec. 5, Ch. 534, L. 1985.**

CHAPTER 3

ANTIQUITIES

Part 1 — Historical Society

22-3-101. Historical society.
22-3-102. Definitions.
22-3-103. Historical library — independence from other libraries, museums, or galleries.
22-3-104. Appointment and qualifications of board of trustees.
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22-3-432. Antiquities permits.
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22-3-436 through 22-3-440 reserved.
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22-3-442. Criminal penalty.

Part 5 — Museum Loan Act

22-3-501. Short title.
22-3-502. Purpose.
22-3-503. Definitions.
22-3-504. Loans for an indefinite term.
22-3-505. Manner of giving notice to lender.
22-3-506. Notice of intent to preserve interest.
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22-3-521. Limitation on action against the museum.
22-3-522. Uniform Unclaimed Property Act superseded.
22-3-523. Applicability.

Chapter Cross-References

Acquisition of land for museums, 7-16-2105, 7-16-4104.

County museums, Title 7, ch. 16, part 22.

Authorization to establish cultural facilities, 7-16-4103.

Military archives, 10-1-102.

Preservation of historical sites and monuments, 23-1-101.

Fire safety requirements in museums, 50-61-101.

Preservation of natural areas, Title 76, ch. 12, part 1.

Presentation of hides to museums, 81-7-105, 81-7-120.

Part 1

Historical Society

Part Cross-References

Distribution of Administrative Rules of Montana to State Historical Society, 2-4-313.

Creation of advisory councils, 2-15-122.

Agency allocation to State Board of Education, 2-15-1511.

Boards and offices associated with State Historical Society, 2-15-1512.

Distribution of Senate and House Journals and Session Laws, 5-11-203.

Authorization to levy tax for cultural facilities, 7-16-4105.

Receipt of historical, aesthetic, and cultural objects, sites, or buildings as in-kind payment of inheritance or estate taxes, 72-16-445 through 72-16-450.

22-3-101. Historical society. The historical society of Montana, originally organized under the provisions of an act of the legislative assembly of the territory of Montana entitled "An Act to Incorporate the Historical Society of Montana", approved February 2, 1865, and thereafter made to become the historical society of the state of Montana by an act approved

March 4, 1891, entitled "An Act Concerning the Historical Society for the State of Montana and Making an Appropriation Therefor" and by "An Act to Perpetuate the Historical Society of the State of Montana", approved March 1, 1949, is hereby continued and perpetuated as the Montana historical society and as such constitutes an agency of state government for the use, learning, culture, and enjoyment of the citizens of the state and for the acquisition, preservation, and protection of historical records, art, archival, and museum objects, historical places, sites, and monuments and the custody, maintenance, and operation of the historical library, museums, art galleries, and historical places, sites, and monuments.

History: En. Sec. 1, Ch. 47, L. 1963; R.C.M. 1947, 44-516.

22-3-102. Definitions. As used in this part, the following definitions apply:

(1) "Society" means the Montana historical society and includes:

(a) the historical library and its contents;

(b) any museums and art galleries and their contents acquired by the trustees;

(c) any historical places, sites, or monuments acquired or developed by the society;

(d) any divisions, departments, and activities operated in conjunction with the historical library as are established by the trustees; and

(e) any books, papers, maps, charts, manuscripts, photographs, writings, records, objects of history and art, paintings, engravings, relics, collections of artifacts and minerals, furniture, or fixtures acquired by the trustees.

(2) "Trustees" means the board of trustees of the Montana historical society.

(3) "Committee" means the executive committee of the board of trustees of the Montana historical society.

(4) "Historic records" means manuscripts, papers, maps, charts, journals, diaries, photographs, business records, voice recordings, films, video tapes, or other records illustrative of the history of Montana in particular and generally of the region.

(5) "Historic records network" means an agreement between the Montana historical society and the Montana university system to facilitate exchange and cooperation in the use, acquisition, and preservation of historic records.

History: En. Sec. 2, Ch. 47, L. 1963; amd. Sec. 5, Ch. 3, L. 1977; amd. Sec. 1, Ch. 366, L. 1977; R.C.M. 1947, 44-517.

22-3-103. Historical library — independence from other libraries, museums, or galleries. (1) There is a historical library, to be maintained and operated by the Montana historical society.

(2) The historical library and any historical museum administered by the society in accordance with the provisions of this part shall be independent of any other library, museum, or gallery owned, maintained, or operated by the state of Montana.

History: (1)En. 44-515.1 by Sec. 4, Ch. 3, L. 1977; Sec. 44-515.1, R.C.M. 1947; (2)En. Sec. 3, Ch. 47, L. 1963; amd. Sec. 6, Ch. 3, L. 1977; Sec. 44-518, R.C.M. 1947; R.C.M. 1947, 44-515.1, 44-518.

22-3-104. Appointment and qualifications of board of trustees. (1) The government and administration of the society are vested in a board of

15 trustees appointed by the governor, by and with the consent of the senate. Three each of the original members of the board shall be appointed for 1-, 2-, 3-, 4-, and 5-year terms. An appointment to replace a member whose term has expired shall be for 5 years. An appointment to replace a member whose term has not expired shall be for the unexpired term.

(2) Trustees shall be appointed because of their special interest in the accomplishment of the purposes of the society, their fitness for discharging these duties, and their willingness to devote time and effort in the public interest. The governor, insofar as possible, shall appoint trustees from the various geographical areas of the state.

(3) Of the 15 trustees, at least one shall be a recognized historian and at least one shall be a recognized archeologist.

(4) The governor shall appoint these professionals to the board of trustees as vacancies occur.

History: (1)En. Sec. 4, Ch. 47, L. 1963; Sec. 44-519, R.C.M. 1947; (2) thru (4)En. Sec. 5, Ch. 47, L. 1963; amd. Sec. 7, Ch. 3, L. 1977; amd. Sec. 1, Ch. 520, L. 1977; Sec. 44-520, R.C.M. 1947; R.C.M. 1947, 44-519, 44-520.

Cross-References

Boards and offices associated with State Historical Society, 2-15-1512.

22-3-105. Compensation and expenses of trustees. Each member of the board of trustees shall be compensated and receive travel expenses as provided for in 2-15-124.

History: En. 82A-507 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 7, Ch. 51, L. 1974; amd. Sec. 1, Ch. 203, L. 1975; amd. Sec. 23, Ch. 453, L. 1977; R.C.M. 1947, 82A-507(3); amd. Sec. 1, Ch. 3, L. 1979; amd. Sec. 8, Ch. 650, L. 1985.

22-3-106. Executive committee. The trustees may select an executive committee of five trustees and delegate to the committee such functions in aid of the efficient administration of the affairs of the society as the trustees deem advisable.

History: En. Sec. 6, Ch. 47, L. 1963; R.C.M. 1947, 44-521.

22-3-107. Authority of board. The powers and duties of the trustees are as follows:

(1) to elect annually from among their number a president, a vice-president, and a secretary;

(2) to adopt bylaws for their own government and to make rules, not inconsistent with law, for the proper administration of the society in the interests of preserving the rich heritage of this state and its people;

(3) to appoint a director, fix his salary, and prescribe his duties and responsibilities;

(4) to create such classes of memberships in the society as they deem desirable, to determine the qualifications for any class of membership, and to set the fees to be paid for such memberships;

(5) to sell or exchange publications and other museum or art objects and use the money arising from such sales for the operation of the society and for the acquisition of historical materials and objects of art;

(6) to sell or exchange surplus or duplicate books, surplus museum or art objects or artifacts not pertinent to the region encompassed by the Montana

historical society mission and to use the money arising from such sales exclusively for acquisitions of library, art, and museum artifacts;

(7) to see that the collections and properties of the society are maintained in good order and repair;

(8) to report to the governor and the legislature biennially. The report shall include a statement of all important transactions and acquisitions, with suggestions and recommendations for the better realization of the purposes of the society and the improvement of its collections and services.

(9) to accept, receive, and administer in the name of the society any gifts, donations, properties, securities, bequests, and legacies that may be made to the society. Moneys received by donation, gift, bequest, or legacy, unless otherwise provided by the donor, shall be deposited in the state treasury and used for the general operation of the society.

(10) to collect, assemble, preserve, and display, where appropriate, all obtainable books, pamphlets, maps, charts, manuscripts, journals, diaries, papers, business records, paintings, drawings, engravings, photographs, statuary, models, relics, and all other materials illustrative of the history of Montana in particular and generally of the Pacific Northwest, Northern Rocky Mountain, and Northern Great Plains regions and of the United States of America when pertinent;

(11) to procure from pioneers, early settlers, and others narratives of the events relative to the early settlement of Montana, the Indian occupancy, Indian and other wars, overland travel and immigration to the territories of the west, and all other related documents of Montana's history, development, and society;

(12) to gather contemporary information, specimens, and all other materials which exhibit faithfully the distinctive historical and contemporary characteristics of the area, with particular attention to Indian, military, and pioneer artifacts and implements;

(13) to collect and preserve such natural history objects as fossils, plants, minerals, and animals;

(14) to collect and preserve books, maps, manuscripts, and other materials as will tend to facilitate historical, scientific, and antiquarian research;

(15) to promote the study of Montana history by lectures and publications;

(16) to publish a roadside history of Montana with maps, photographs, and text that will enable tourists, citizens, and students to understand the history of the countryside seen from the state's main roads;

(17) to generally foster and encourage the fine arts and cultural activities in Montana;

(18) to receive for and on behalf of the state, by donation or otherwise, art objects of any kind and description and to exhibit and circulate such objects in Montana and elsewhere;

(19) to microfilm papers or documents in danger of disappearance or injury; and

(20) to coordinate the administration of the historic records network established in 22-3-211.

History: En. Sec. 8, Ch. 47, L. 1963; amd. Sec. 1, Ch. 204, L. 1975; amd. Sec. 2, Ch. 366, L. 1977; R.C.M. 1947, 44-523; amd. Sec. 1, Ch. 419, L. 1983.

22-3-108. Function of director — employment of assistants. The director is fully responsible for the immediate direction, management, and control of the society, subject to the general programs and policies established by the trustees. The director may appoint and employ all assistants and employees required for the management of the historical society, subject to approval by the trustees.

History: **En. Sec. 9, Ch. 47, L. 1963; R.C.M. 1947, 44-524.**

22-3-109. Official seal. The design of the official seal of the society shall be substantially as follows: a central group representing a covered immigrant wagon drawn by two yoke of oxen, showing prairie in the foreground, mountains in the background, and directly beneath it the figures "1865". The seal shall be 2 inches in diameter and surrounded by the words, "Montana Historical Society Seal".

History: **En. Sec. 10, Ch. 47, L. 1963; R.C.M. 1947, 44-525.**

22-3-110. Decor of quarters. The offices, library, museums and galleries, and quarters for the activities of the society in the veterans' and pioneers' memorial building shall be decorated, fitted, furnished, and maintained in dignity and in harmony with the purposes of the society. All furniture and fittings for storage and the use of the library shall be, in design and function, adapted to the efficient and dignified operation and administration of the activities of the society.

History: **En. Sec. 11, Ch. 47, L. 1963; R.C.M. 1947, 44-526.**

22-3-111. Financing of society. The society may engage in such fundraising drives and public contribution campaigns as will contribute to its continued development and support. It may produce, reproduce, sell, or exchange art objects, film, books, photographs, magazines, pamphlets, and museum objects which are appropriate and will bring credit to the society and to Montana. It may also receive fees, commissions, and royalties on the display and sale of arts and crafts. All profits, revenues, royalties, or fees received in any such manner shall be deposited in the state treasury and may not be used for any purposes other than the improvement, development, and operation of the society.

History: **En. Sec. 12, Ch. 47, L. 1963; R.C.M. 1947, 44-527.**

Cross-References

Authority for use of certain magazine subscription fees for current publication, 17-8-107.

22-3-112. Renumbered 22-2-301 by Code Commissioner, 1983.

Part 2

Preservation of Records

Part Cross-References

Natural resource information system and natural heritage program, Title 90, ch. 15.

22-3-201. Public policy. The legislature declares that it is the public policy of the state of Montana that noncurrent records of permanent value to the state should be preserved and protected; that the operations of state government should be made more efficient, more effective, and more economical through current records management; and that to the end that the people may receive maximum benefit from a knowledge of state affairs, the state should preserve its noncurrent records of permanent value for study and research.

History: En. Sec. 1, Ch. 108, L. 1969; R.C.M. 1947, 82-3207.

22-3-202. Archives created — appointment, duties, and compensation of archivist. There is a state archives in the Montana historical society for the preservation of noncurrent records of permanent value to the state and for records management. The director of the Montana historical society shall appoint a state archivist, who serves at the pleasure of the director, define his duties, and fix his compensation with the approval of the board of trustees of the Montana historical society.

History: En. Sec. 2, Ch. 108, L. 1969; R.C.M. 1947, 82-3208.

22-3-203. Preservation of noncurrent records of permanent value. The state archivist shall preserve noncurrent records of permanent value. Upon request, he shall assist and advise in the establishment of records management programs in the executive, legislative, and judicial branches of state government with due regard to the functions of the officers and agencies involved.

History: En. Sec. 3, Ch. 108, L. 1969; amd. Sec. 1, Ch. 41, L. 1973; R.C.M. 1947, 82-3209.

Cross-References

Department of Administration records preservation, 2-6-203, 2-6-205.

Authority of the Board of Trustees of the State Historical Society, 22-3-107.

22-3-204 through 22-3-210 reserved.

22-3-211. Historic records network — creation — purpose. (1) The trustees of the Montana historical society shall establish and coordinate the administration of an historic records network.

(2) The staff of the society shall aid staff archivists and librarians at the university units in their work of acquiring, cataloguing, processing, microfilming, and preserving historic records.

History: En. 44-523.1 by Sec. 3, Ch. 366, L. 1977; R.C.M. 1947, 44-523.1.

Cross-References

Authority of Board of Trustees of the State Historical Society, 22-3-107.

22-3-212. Funding. The historic records network shall operate within the budgets of the historical society and the university system.

History: En. 44-523.2 by Sec. 4, Ch. 366, L. 1977; R.C.M. 1947, 44-523.2.

22-3-213 through 22-3-220 reserved.

22-3-221. Storing and safekeeping of war records. The board of trustees of the Montana historical society is hereby authorized and directed to set apart a suitable room in the buildings under their jurisdiction for the storing and safekeeping of such archives, records, etc., of the grand army of the republic and the united Spanish war veterans, and said room shall be suitably furnished, and the librarian for the Montana historical society shall be custodian of said archives, records, etc.

History: **En. Sec. 1, Ch. 32, L. 1913; amd. Sec. 2, Ch. 97, L. 1915; re-en. Sec. 321, R.C.M. 1921; amd. Sec. 1, Ch. 96, L. 1927; re-en. Sec. 321, R.C.M. 1935; amd. Sec. 3, Ch. 93, L. 1953; R.C.M. 1947, 82-2502.**

Cross-References

Duties of Department of Military Affairs, 10-1-102.

Part 3

Veterans' and Pioneers' Memorial Building

22-3-301. Veterans' and pioneers' memorial building. There is a veterans' and pioneers' memorial building located in Helena.

History: **En. 78-201.1 by Sec. 8, Ch. 3, L. 1977; R.C.M. 1947, 78-201.1.**

22-3-302. Use of building. The veterans' and pioneers' memorial building shall constitute a perpetual memorial to the war veterans and the pioneers of Montana, and said building shall be devoted to the use of the united Spanish war veterans of Montana, the veterans of foreign wars of Montana, the American legion of Montana, the disabled American veterans of Montana, the World War I veterans of Montana, the Montana historical society, the society of Montana pioneers, and the sons and daughters of Montana pioneers and for the housing of books, records, documents, and other property of such veterans and organizations; and there shall be provided in said building appropriate office quarters for the state headquarters and officers and employees of such veterans and organizations and for the librarian and other employees of the Montana historical society.

History: **En. Sec. 2, Ch. 204, L. 1945; amd. Sec. 1, Ch. 54, L. 1961; amd. Sec. 27, Ch. 271, L. 1963; R.C.M. 1947, 78-202.**

22-3-303. Gifts for building. The state of Montana is hereby authorized to receive gifts, legacies, and donations of money or other property for the erection or maintenance of the memorial building herein provided for, and all such gifts, legacies, and donations are hereby dedicated to such purpose.

History: **En. Sec. 9, Ch. 204, L. 1945; R.C.M. 1947, 78-209.**

Part 4

Antiquities

Part Cross-References

Natural resource information system and natural heritage program, Title 90, ch. 15.

Historical, aesthetic, and cultural objects, sites, or buildings — in-kind payment of inheritance and estate taxes, 72-16-445 through 72-16-450.

22-3-401 through 22-3-413. Repealed. Sec. 16, Ch. 563, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

22-3-401. En. Sec. 1, Ch. 502, L. 1973; R.C.M. 1947, 81-2501.

22-3-402. En. Sec. 2, Ch. 502, L. 1973; R.C.M. 1947, 81-2502.

22-3-403. En. Sec. 3, Ch. 502, L. 1973; amd. Sec. 1, Ch. 440, L. 1977; R.C.M. 1947, 81-2503.

22-3-404. En. Sec. 4, Ch. 502, L. 1973; amd. Sec. 2, Ch. 440, L. 1977; R.C.M. 1947, 81-2504.

22-3-405. En. Sec. 5, Ch. 502, L. 1973; amd. Sec. 3, Ch. 440, L. 1977; R.C.M. 1947, 81-2505.

22-3-406. En. Sec. 6, Ch. 502, L. 1973; amd. Sec. 4, Ch. 440, L. 1977; R.C.M. 1947, 81-2506.

22-3-407. En. Sec. 7, Ch. 502, L. 1973; amd. Sec. 5, Ch. 440, L. 1977; R.C.M. 1947, 81-2507.

22-3-408. En. Sec. 8, Ch. 502, L. 1973; amd. Sec. 9, Ch. 3, L. 1977; amd. Sec. 6, Ch. 440, L. 1977; R.C.M. 1947, 81-2508.

22-3-409. En. Sec. 9, Ch. 502, L. 1973; amd. Sec. 7, Ch. 440, L. 1977; R.C.M. 1947, 81-2509.

22-3-410. En. Sec. 10, Ch. 502, L. 1973; amd. Sec. 10, Ch. 3, L. 1977; amd. Sec. 8, Ch. 440, L. 1977; R.C.M. 1947, 81-2510.

22-3-411. En. Sec. 11, Ch. 502, L. 1973; amd. Sec. 9, Ch. 440, L. 1977; R.C.M. 1947, 81-2511.

22-3-412. En. Sec. 12, Ch. 502, L. 1973; amd. Sec. 10, Ch. 440, L. 1977; R.C.M. 1947, 81-2512.

22-3-413. En. Sec. 13, Ch. 502, L. 1973; amd. Sec. 11, Ch. 440, L. 1977; R.C.M. 1947, 81-2513.

22-3-414 through 22-3-420 reserved.

22-3-421. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Antiquities permit" means the permit granted for excavation, removal, or restoration of heritage properties or paleontological remains provided for in 22-3-432.

(2) "Heritage property" means any district, site, building, structure, or object located upon or beneath the earth or under water that is significant in American history, architecture, archaeology, or culture.

(3) "Historic preservation office" means the office within the Montana historical society provided for in 2-15-1512.

(4) "Historic preservation officer" means the officer provided for in 2-15-1512.

(5) "Paleontological remains" means fossilized plants and animals of a geological nature found upon or beneath the earth or under water which are rare and critical to scientific research.

(6) "Preservation review board" means the board provided for in 2-15-1512.

(7) "Register" means the National Register of Historic Places, the official list of the nation's heritage properties worthy of preservation because of national, state, or local significance.

(8) "Registered property" means any heritage property listed in the register.

(9) "State agency" means any executive agency of the state of Montana.

History: En. Sec. 4, Ch. 563, L. 1979; amd. Sec. 1, Ch. 323, L. 1987.

Compiler's Comments

1987 Amendment: In (1), after "granted for", substituted "excavation, removal, or restoration" for "exploration or field investigations".

22-3-422. Duties of preservation review board. The preservation review board shall:

(1) recommend nominations to the register;

(2) approve or disapprove all nominations to the register;

(3) approve or disapprove additions to statewide inventories of heritage properties;

(4) review the annual work program that recommends preservation goals and grant allocations for the next succeeding fiscal year; and

(5) act in an advisory capacity to the historic preservation office and to state agencies.

History: **En. Sec. 5, Ch. 563, L. 1979.**

22-3-423. Duties of historic preservation officer. The historic preservation officer has the following duties and responsibilities:

(1) follow necessary procedures to qualify the state for money that is now or will be made available under any act of congress of the United States or otherwise for purposes of historic preservation;

(2) conduct an ongoing statewide survey to identify and document heritage properties and paleontological remains;

(3) maintain a state inventory file of heritage properties and paleontological remains and maintain a repository for all such inventory work done in the state;

(4) evaluate and formally nominate potential register properties according to the criteria established by the register;

(5) prepare and annually review the state preservation plan, register nominations, and historic preservation grant activity;

(6) maintain, publish, and disseminate information relating to heritage properties and paleontological remains in the state;

(7) cooperate with and assist local, state, and federal government agencies in comprehensive planning that allows for the preservation of heritage properties and paleontological remains;

(8) enter into cooperative agreements with the federal government, local governments, and other governmental entities or private landowners or the owners of objects to ensure preservation and protection of registered properties;

(9) adopt rules outlining procedures by which a state agency that has no approved rules under 22-3-424(1) shall systematically consider heritage properties or paleontological remains on lands owned by the state and avoid, whenever feasible, state actions or state assisted or licensed actions that substantially alter such properties;

(10) protect from disclosure to the public any information relating to the location or character of heritage properties when disclosure would create a substantial risk of harm, theft, or destruction to such resources or to the area or place where the resources are located; and

(11) any other necessary or appropriate activity permitted by law to carry out and enforce the provisions of this part.

History: **En. Sec. 6, Ch. 563, L. 1979; amd. Sec. 1, Ch. 351, L. 1983; amd. Sec. 2, Ch. 323, L. 1987.**

Compiler's Comments

1987 Amendment: Inserted (10).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Use of heritage properties for state agency new space needs, 2-17-107.

Land preservation, 23-1-106 through 23-1-108.

State planning on historical sites, 90-1-102.

22-3-424. Duties of state agencies. State agencies shall:

(1) in consultation with the historical society adopt rules for the identification and preservation of heritage properties and paleontological remains on lands owned by the state to avoid, whenever feasible, state actions or state assisted or licensed actions that substantially alter heritage properties or paleontological remains on lands owned by the state or, in the absence of such rules, act in compliance with rules adopted under 22-3-423;

(2) identify and develop, in consultation with the historic preservation officer, methods and procedures to ensure that the identification and protection of heritage properties and paleontological remains on lands owned by the state are given appropriate consideration in state agency decisionmaking;

(3) deposit in the historic preservation office all inventory reports, including maps, photographs, and site forms, of heritage properties and paleontological remains.

History: En. Sec. 9, Ch. 563, L. 1979; amd. Sec. 2, Ch. 351, L. 1983.

Cross-References

Land preservation, 23-1-106, 23-1-107.

State planning on historical sites, 90-1-102.

22-3-425 through 22-3-430 reserved.

22-3-431. Registration of heritage properties. (1) Any citizen of Montana may submit to the historic preservation officer for his consideration the necessary forms to nominate heritage properties to the register.

(2) (a) For private properties, the historic preservation officer shall notify the owner of the property and allow him a reasonable period of time to concur or object to the nomination of the property for registration. If the owner of the property, or a majority of owners if the property has more than one owner, objects to registration, the historic preservation officer may not nominate the property unless the objection is withdrawn. If there are no such objections, the historic preservation officer may, upon approval by the preservation review board, nominate heritage properties to the register.

(b) The historic preservation officer and the preservation review board may review the nomination of property that was not nominated due to owner objection to determine whether the property is eligible for registration. If the historic preservation officer and the preservation review board determine that the property is eligible for registration, the preservation officer shall provide for the register information about the property for determination of registration eligibility.

(c) The historic preservation officer shall follow the procedures mandated by 36 CFR 60.6 relating to seeking property owner concurrence or objection to registration.

(3) For lands owned by the state, a county, or a municipality, the historic preservation officer may, upon approval by the preservation review board, nominate heritage properties to the register. The historic preservation officer shall notify the appropriate governmental agency and give public notice when any such governmental property is being considered for nomination. Unless agency or public objections are submitted in writing within 30 days after notification, the historic preservation officer shall complete the nominations. When an agency or any citizen of Montana submits written objections, the historic preservation officer shall consider the objections and may conduct a

public hearing. If a hearing is held, it shall be commenced within 30 days after the final date for submission of written objections. Within 60 days after submission of the objections or after the public hearing, the historic preservation officer shall make a final decision on the proposed registration and prepare a statement responsive to the objections submitted.

History: **En. Sec. 7, Ch. 563, L. 1979; amd. Sec. 1, Ch. 199, L. 1983; amd. Sec. 3, Ch. 323, L. 1987.**

Compiler's Comments

1987 Amendment: In (2)(a) substituted "private properties" for "properties not owned by the state" and after "officer" substituted remainder of (2)(a) for former language that read: "may, upon approval by the preservation review board and with the written concurrence of the owner or owners of the property, nominate heritage properties to the register. In the case of a historic district, the historic preservation officer may nominate the property only with the concurrence of:

(a) a majority of the property owners of the district; and

(b) the owners of more than one-half of the property in the district"; inserted (2)(b) and (2)(c); in (3), near beginning after "state", inserted "a county, or a municipality" and in second sentence, after "appropriate", substituted "governmental agency" for "state agency" and after "when any" inserted "such governmental"; and made minor changes in phraseology.

Cross-References

Natural resource information system and natural heritage program, Title 90, ch. 15.

22-3-432. Antiquities permits. (1) No person may excavate, remove, or restore any heritage property or paleontological remains on lands owned by the state without first obtaining an antiquities permit from the historic preservation officer.

(2) Antiquities permits are to be granted only after careful consideration of the application for a permit and after consultation with the appropriate state agency. Permits are subject to strict compliance with the following guidelines:

(a) Antiquities permits may be granted only for work to be undertaken by reputable museums, universities, colleges, or other historical, scientific, or educational institutions, societies, or persons with a view toward dissemination of knowledge about cultural properties, provided no such permit may be granted unless the historic preservation officer is satisfied that the applicant possesses the necessary qualifications to guarantee the proper excavation of those sites and objects that may add substantially to man's knowledge about Montana and its antiquities.

(b) The antiquities permit must specify that a summary report of such investigations, containing relevant maps, documents, drawings, and photographs, be submitted to the historic preservation officer. The historic preservation officer shall determine the appropriate time period allowable between all work undertaken and submission of the summary report.

(3) All heritage property and paleontological remains collected under an antiquities permit are the permanent property of the state and must be deposited in museums or other institutions within the state or loaned to qualified institutions outside the state, unless otherwise provided for in the antiquities permit.

(4) An antiquities permit is not a substitution for any other type of permit that a state agency may require for other purposes.

History: **En. Sec. 8, Ch. 563, L. 1979.**

22-3-433. Environmental review process. (1) Each state agency responsible for the preparation of an environmental impact statement in accordance with the Montana Environmental Policy Act shall, as a part of its evaluation and study process, consult with and obtain the comments of the historic preservation officer concerning the identification and location of heritage properties and paleontological remains on lands owned by the state that may be adversely impacted by the proposed action. However, where the grant of an interest in state land requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, the environmental impact statement shall be limited to an evaluation of the heritage properties and paleontological remains located in, on, under, and within only the affected state land.

(2) When heritage properties and paleontological remains are located and identified as described in subsection (1), the responsible state agency, in consultation with the historic preservation officer and the preservation review board, shall include as part of its environmental impact statement a plan for the avoidance or mitigation of damage to heritage properties and paleontological remains to the greatest extent practicable. Whenever necessary or appropriate, the state agency may require an applicant for a lease, permit, license, or other approval for use of land owned by the state to develop an avoidance or mitigation plan in consultation with the historic preservation officer and the preservation review board.

History: En. Sec. 10, Ch. 563, L. 1979.

Cross-References

MEPA — Environmental Impact Statements, Title 75, ch. 1, part 2.

22-3-434. Denial of applications. State agencies may deny or approve with conditions any application for an easement, lease, permit, contract, license, or certificate in order to protect heritage properties and paleontological remains that cannot be properly mitigated; provided that this section is limited only to heritage properties and paleontological remains which have been located as a part of the environmental impact statement reviews process as described in 22-3-433.

History: En. Sec. 11, Ch. 563, L. 1979.

22-3-435. Report of discovered heritage properties or paleontological remains. Any person conducting activities, including survey, excavation, or construction, who discovers on any lands owned by the state any heritage property or paleontological remains as defined in 22-3-421 or who finds that an operation licensed or otherwise entitled by the state may damage heritage properties or paleontological remains on any lands owned by the state shall promptly report to the historic preservation officer the discovery of such findings and shall take all reasonable steps to ensure preservation of the heritage property or paleontological remains.

History: En. Sec. 12, Ch. 563, L. 1979.

Cross-References

State planning on historical sites, 90-1-102.

22-3-436 through 22-3-440 reserved.

22-3-441. Restrictions on reproduction or sale of heritage property and paleontological remains. (1) No person may reproduce or falsely identify any heritage property or paleontological remains with the intent to sell the property or remains as an original.

(2) No person may sell any heritage property or paleontological remains with the knowledge that the property or remains have previously been collected or excavated in violation of this section, 22-3-432, or 22-3-435.

History: En. Sec. 13, Ch. 563, L. 1979.

22-3-442. Criminal penalty. A person violating any provision of 22-3-432, 22-3-435, or 22-3-441 is guilty of a misdemeanor and upon conviction shall be fined not more than $1,000 or be imprisoned in the county jail for not more than 6 months, or both. Each day of continued violation of any provision of 22-3-432, 22-3-435, or 22-3-441 constitutes a distinct and separate offense.

History: En. Sec. 14, Ch. 563, L. 1979.

Part 5

Museum Loan Act

Part Cross-References

County museums, Title 7, ch. 16, parts 21 and 22.

Municipal museums, 7-16-4103, 7-16-4105.

Donations of predatory animal hides and specimens, 81-7-105, 81-7-120.

22-3-501. Short title. This part may be cited as the "Museum Loan Act".

History: En. Sec. 1, Ch. 630, L. 1985.

22-3-502. Purpose. The people of Montana have an interest in preserving and protecting objects of scientific, historic, artistic, or cultural value and making them accessible to the public. The purpose of this part is to serve this interest by establishing a uniform procedure for lenders to preserve their interests in property loaned to museums; to require lenders to notify museums of changes of address and transfers of ownership of loaned property; and to vest title to unclaimed property in the museum that holds it.

History: En. Sec. 2, Ch. 630, L. 1985.

22-3-503. Definitions. As used in this part, the following definitions apply:

(1) "Loan" means a deposit of property not accompanied by a transfer of title to the property.

(2) "Museum" means an institution located in Montana and operated by a nonprofit corporation or a public agency primarily for educational, scientific, or aesthetic purposes, and that owns, borrows, or cares for and exhibits, studies, or catalogs property.

(3) "Property" includes any tangible object, animate or inanimate, that has intrinsic historic, artistic, scientific, or cultural value.

History: En. Sec. 3, Ch. 630, L. 1985.

22-3-504. Loans for an indefinite term. (1) If a museum accepts a loan of property for an indefinite term or for a term longer than 7 years, the museum must inform the lender in writing at the time of the loan of the provisions of this part.

(2) For the purposes of this part, a loan for a specified term becomes a loan for an indefinite term if the property remains in the custody of the museum after the specified term expires.

History: **En. Sec. 4, Ch. 630, L. 1985.**

22-3-505. Manner of giving notice to lender. When the provisions of this part require a museum to give notice to a lender, the museum is considered to have given notice if the museum mails the notice to the lender at the lender's address and proof of receipt is received by the museum within 30 days from the date the notice was mailed. If the museum does not have a current address for the lender or if proof of receipt is not received by the museum, notice is considered given if the museum publishes it at least once a week for 3 consecutive weeks in a newspaper of general circulation in both the county in which the museum is located and the county of the lender's most recent address as shown on the museum's records.

History: **En. Sec. 5, Ch. 630, L. 1985.**

22-3-506. Notice of intent to preserve interest. (1) The owner of property on loan to a museum may file with the museum a notice of intent to preserve an interest in the property. This notice must be in writing and must contain a description of the property adequate to enable the museum to identify the property.

(2) The filing of a notice of intent to preserve an interest in property on loan to a museum does not validate or make enforceable any claim that would be extinguished under the terms of a written loan agreement or that would otherwise be invalid or unenforceable.

(3) (a) Unless the loaned property is returned to the claimant, the museum shall retain for not less than 25 years the original or an accurate copy of any notice filed by a claimant under this section.

(b) The fact that the museum retains a notice may not be construed to mean that the notice is sufficient or accurate or that it is effective to preserve an interest in property on loan to the museum.

(4) A notice of intent to preserve an interest in property on loan to a museum satisfies the requirements of subsection (1) if it is in substantially the following form and contains the information and attachments described:

NOTICE TO PRESERVE AN INTEREST IN PROPERTY
ON LOAN TO A MUSEUM

Name of Museum .... Date..................
Claimant's Name ....
Address..
(street address; city; state; zip code)
Telephone ....
Date Property Loaned..
Description of Property..
....
....

Documentation of ownership — check the appropriate box:

☐ Legible copy of original loan receipt attached

☐ Other documentation attached

If you are not the original lender, describe the origin of your interest in the property and attach a copy of any document that creates your interest:

....

....

....

I understand that I must promptly notify the museum in writing of any change of address or change in ownership of the loaned property.

I declare under penalty of false swearing that to the best of my knowledge the information contained in this notice is true.

SIGNED ....

(claimant)

OR I declare under penalty of false swearing that I am authorized to act on behalf of the claimant and am informed and believe that the information contained in this notice is true.

SIGNED ....

(claimant's representative)

History: **En. Sec. 6, Ch. 630, L. 1985.**

22-3-507. Notice of change of address or transfer of ownership. The owner of property on loan to a museum shall notify the museum in writing of any change of address or change in ownership of the property.

History: **En. Sec. 7, Ch. 630, L. 1985.**

22-3-508. Conservation or disposal of loaned property. (1) Unless there is a written loan agreement to the contrary, a museum may apply conservation measures to or dispose of property on loan to the museum without the lender's permission if immediate action is required to protect the property on loan or other property in the custody of the museum or if the property on loan has become a hazard to the health and safety of the public or the museum staff and:

(a) the museum is unable to reach the lender at the lender's last address of record; or

(b) the lender will not agree to the protective measures the museum recommends, yet is unwilling or unable to terminate the loan and retrieve the property.

(2) If a museum applies conservation measures to or disposes of property under the provisions of this section, the museum:

(a) has a lien on the property and on the proceeds of any disposition thereof for the costs incurred by the museum; and

(b) is not liable for injury to or loss of the property if it:

(i) had a reasonable belief at the time the action was taken that the action was necessary to protect the property on loan or other property in the custody of the museum or that the property on loan was a hazard to the health and safety of the public or the museum staff; and

(ii) exercised reasonable care in the choice and application of conservation measures.

History: **En. Sec. 8, Ch. 630, L. 1985.**

22-3-509. Notice of injury or loss. (1) A museum shall give a lender prompt notice of any known injury to or loss of property on loan.

(2) A notice of injury or loss must contain the lender's name, the lender's most recent address as shown on the museum's records, the date of the loan, and the name, address, and telephone number of the appropriate office or official to be contacted at the museum for information regarding the loan.

(3) If the museum is unable to give the lender the notice required by this section by mail, the museum shall publish the notice as provided in 22-3-505 and in addition shall include a statement containing substantially the following information:

The records of..

(name of museum)

indicate that you have property on loan to it. Your failure to notify it in writing of a change of address or ownership may result in the loss of rights in the loaned property. See 22-3-507, MCA.

History: **En. Sec. 9, Ch. 630, L. 1985.**

22-3-510. Notice of intent to terminate loan. A museum may give the lender notice of its intent to terminate a loan made for an indefinite term or for a term longer than 7 years. A notice of intent to terminate a loan must include the lender's name, the lender's most recent address as shown on the museum's records, the date of the loan, and the name, address, and telephone number of the appropriate office or official to be contacted at the museum for information regarding the loan. In addition, it must include a statement containing substantially the following information:

The records of..

(name of museum)

indicate that you have property on loan to it. The institution wishes to terminate the loan. You must contact the institution, establish your ownership of the property, and make arrangements to collect the property. If you fail to do so, you will be considered to have donated the property to the institution. See 22-3-504, MCA.

History: **En. Sec. 10, Ch. 630, L. 1985.**

22-3-511 through 22-3-520 reserved.

22-3-521. Limitation on action against the museum. (1) No action may be brought against a museum for damages because of injury to or loss of property loaned to the museum more than 3 years from the date the museum gives the lender notice of the injury or loss or 10 years from the date of the injury or loss, whichever occurs earlier.

(2) No action may be brought against a museum to recover property on loan if more than 3 years have passed from the date the museum gave the lender notice of its intent to terminate the loan as provided in 22-3-510.

(3) No action may be brought against a museum to recover property on loan if more than 25 years have passed from the date of the last written contact between the lender and the museum, as evidenced in the museum's records.

(4) A lender is considered to have donated loaned property to the museum if the lender fails to file an action to recover the property on loan to the museum within the periods specified in subsections (1) through (3).

(5) A person who purchases property from a museum acquires good title to the property if the museum has acquired title to the property pursuant to subsection (4).

(6) Notwithstanding subsections (3) and (4), a lender who was not given notice that the museum intended to terminate a loan and who proves that the museum received a notice of intent to preserve an interest in loaned property within the 25 years immediately preceding the filing of an action to recover the property may recover the property or, if the property has been disposed of, the reasonable value of the property at the time it was disposed of plus interest at 10% a year.

History: En. Sec. 11, Ch. 630, L. 1985.

22-3-522. Uniform Unclaimed Property Act superseded. The provisions of this part supersede the provisions of Title 70, chapter 9, parts 1 through 3, except that at its option a museum may report property that has been on loan unclaimed by its owner for more than 7 years to the department of revenue for disposition as provided in Title 70, chapter 9, part 3.

History: En. Sec. 12, Ch. 630, L. 1985.

22-3-523. Applicability. This part applies only to property loaned to a museum on or after October 1, 1985, or to existing loaned property with a market value of $1,000 or less at the time of disposal.

History: En. Sec. 14, Ch. 630, L. 1985.

TITLE 23

PARKS, RECREATION, SPORTS, AND GAMBLING

Ch.
1. Parks.
2. Recreation.
3. Athletics — Boxing and Wrestling.
4. Horseracing.
5. Gambling.

CHAPTER 1

PARKS

Part 1 — State Parks

23-1-101. Purpose.
23-1-102. Powers and duties of department of fish, wildlife, and parks.
23-1-103. Acceptance of title to recreational and camping grounds by board of land commissioners.
23-1-104. Connecting roads.
23-1-105. Fees and charges — golden years pass — disabled person waiver.
23-1-106. Rules — penalties.
23-1-107. Cooperation.
23-1-108. Acquisition of certain state parks, monuments, or historical sites.
23-1-109. Establishment of Montana agricultural center and museum of the Northern Great Plains.

Part 2 — State Scientific and Recreational Park

23-1-201. Establishment of state scientific and recreational park.
23-1-202. Rules governing use.

Chapter Cross-References

Acquisition and administration — scenic, historic, archeologic, scientific, and recreational areas, Art. IX, sec. 4, Mont. Const.

State jurisdiction in national parks, 2-1-205, 2-1-207.

City or Town Council — condemnation of private property for a park, 7-5-4106.

Deed of county land to other governmental entity for public park — authorization, 7-8-102, 7-16-102.

Governmental and public entities to take property by gift or devise, 7-8-103.

County Board of Park Commissioners, Title 7, ch. 16, part 23.

Municipal authority to establish, alter, and maintain parks, 7-16-4101.

Montana Forest and Conservation Experiment Station established, 20-25-241.

Unlawful obstruction of use of public park — nuisance, 27-30-101.

Tourist campgrounds and trailer courts, Title 50, ch. 52.

Department of Highways — use of federal funds — development of roadside recreational areas, 60-3-103.

Gasoline dealers' license tax — State Parks Account — Snowmobile Account, 60-3-201.

Acquisition of land adjoining or near highway for a park, 60-4-103.

Power of local authority to regulate the speed of vehicles in public parks, 61-12-101.

Servitude to conserve open space for park, historic, or recreational purposes, 70-17-102.

Unlawful dumping of refuse on public recreational property, 75-10-212.

City, County, or City-County Planning Board — taking property by gift or devise, 76-1-408.

Dedication of portion of subdivision to public parks or playgrounds, 76-3-606.

Part 1

State Parks

Part Cross-References

County park districts, Title 7, ch. 16, part 24.

23-1-101. Purpose. For the purpose of conserving the scenic, historic, archaeologic, scientific, and recreational resources of the state and providing for their use and enjoyment, thereby contributing to the cultural, recreational, and economic life of the people and their health, the department of fish, wildlife, and parks (hereinafter referred to as department) is hereby vested with the duties and powers hereinafter set forth.

History: En. Sec. 1, Ch. 48, L. 1939; amd. Sec. 1, Ch. 178, L. 1953; amd. Sec. 1, Ch. 69, L. 1965; amd. Sec. 1, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-301; amd. Sec. 2, Ch. 218, L. 1979.

23-1-102. Powers and duties of department of fish, wildlife, and parks. The department shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state and may by purchase, lease, agreement, acceptance of donations, or condemnation for the purposes outlined in 87-1-209(2) acquire for the state any areas, sites, or objects which in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historical sites. The department may in its discretion accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state. It may in its discretion accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of this part. A contract, for any of the purposes of this part, may not be entered into or other obligation incurred until moneys have been appropriated by the legislature or are otherwise available and, if the contract or obligation pertains to acquisition of areas or sites in excess of either 100 acres or $100,000 in value, until the board of land commissioners has specifically approved such acquisition. The department also has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, historical sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of highways and contiguous to the state highway system. The department may designate lands under its control as state parks, state historical sites, state monuments, or by any other designation it considers appropriate, remove or change the designation of any area or portion, and name or change the name of any area as designated. The department may lease those portions of designated lands which are necessary for the proper administration of these lands in keeping with the basic purpose of this part.

History: En. Sec. 4, Ch. 48, L. 1939; amd. Sec. 1, Ch. 46, L. 1955; amd. Sec. 2, Ch. 69, L. 1965; amd. Sec. 1, Ch. 135, L. 1969; amd. Sec. 49, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-304; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 230, L. 1981; amd. Sec. 1, Ch. 418, L. 1981.

Cross-References

Disposal of coal severance tax for acquisition and maintenance of parks, 15-35-108.

Fish and Wildlife — Department of Fish, Wildlife, and Parks, Title 87, ch. 1, part 2.

23-1-103. Acceptance of title to recreational and camping grounds by board of land commissioners. The state board of land commissioners may acquire and accept title in the name of the state of Montana by grant, dedication, gift, devise, donation, or demise to land suitable for public camping and public recreational use. The state board of land commissioners is hereby authorized to set aside any suitable tract or tracts of state lands for such purpose. Each of the aforesaid tracts of land shall be set aside and used exclusively for public camping and other recreational purposes, and each park created under the provisions of this section shall be given an appropriate name by the state board of land commissioners.

History: En. Sec. 1, Ch. 111, L. 1929; re-en. Sec. 1842.1, R.C.M. 1935; R.C.M. 1947, 62-312.

Cross-References

Payment of estate or inheritance taxes by transfer to state of historical or recreational property, 76-16-445 through 76-16-450.

Organization and duties of Board of Land Commissioners, Title 77, ch. 1, part 2.

Acquisition of land or waters by Department of Fish, Wildlife, and Parks, 87-1-209.

23-1-104. Connecting roads. The department of highways may construct, improve, and maintain, with state highway funds, connecting roads between existing state highways and state parks. Each road shall not exceed a total length of 10 miles.

History: En. Sec. 7, Ch. 48, L. 1939; amd. Sec. 2, Ch. 178, L. 1953; amd. Sec. 3, Ch. 69, L. 1965; amd. Sec. 50, Ch. 511, L. 1973; R.C.M. 1947, 62-307.

Cross-References

Construction of highways by Department of Highways, 60-2-201.

23-1-105. Fees and charges — golden years pass — disabled person waiver. (1) The department shall have power to levy and collect reasonable fees or other charges for the use of such privileges and conveniences as may be provided and to grant such concessions as it may deem advisable, except as provided in subsections (2) and (3). All moneys derived from the activities of the department shall be deposited in the state treasury in a state special revenue fund to the credit of the department.

(2) Any Montana resident as defined in 87-2-102 who is 62 years of age or older may purchase a "Montana state golden years pass" for $1 which, when attached to his or her vehicle, allows the passengers of that vehicle to camp free in Montana state parks, recreation areas, and fishing access sites. This pass is valid for the lifetime of the individual.

(3) The fees established by the department under subsection (1) are waived for a person who is a resident of Montana not residing in an institution and who is certified as disabled in accordance with rules adopted by the department.

History: En. Sec. 5, Ch. 48, L. 1939; amd. Sec. 26, Ch. 147, L. 1963; amd. Sec. 1, Ch. 87, L. 1967; amd. Sec. 1, Ch. 415, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-305; amd. Sec. 1, Ch. 188, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 304, L. 1985.

Cross-References

Deposit of part of gasoline dealers' license tax in state park account, 60-3-201.

23-1-106. Rules — penalties. (1) The department may make rules governing the use, occupancy, and protection of the lands and property under its control.

(2) Any person who injures or damages any land or property under control of the department or private property thereon or therein or violates any of the rules made by the department relating to these areas is guilty of a misdemeanor and shall be fined not more than $500 or be imprisoned in the county jail for not more than 6 months.

History: (1)En. Sec. 6, Ch. 48, L. 1939; amd. Sec. 2, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 62-306, R.C.M. 1947; (2)En. Sec. 3, Ch. 111, L. 1929; re-en. Sec. 1842.3, R.C.M. 1935; amd. Sec. 5, Ch. 178, L. 1953; amd. Sec. 6, Ch. 69, L. 1965; amd. Sec. 5, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 62-314, R.C.M. 1947; R.C.M. 1947, 62-306, 62-314.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

Fish and Wildlife Crimestoppers Act, Title 87, ch. 5, part 6.

23-1-107. Cooperation. In carrying out the provisions of this part, the department may seek and accept the cooperation of other state and local agencies and the agencies of the federal government and may assist and cooperate with other state agencies, political subdivisions of the state, with neighboring states, and with the federal government in matters relating to acquiring, planning, establishing, developing, improving, or maintaining any park, parkway, recreational area, monument, historic site, or archaeological site.

History: En. Sec. 8, Ch. 48, L. 1939; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-308.

23-1-108. Acquisition of certain state parks, monuments, or historical sites. (1) Any person, association, or representative of a governing unit may submit a proposal for the acquisition of a site or area described in 23-1-102 from the income of the trust fund created in 15-35-108 to the department of fish, wildlife, and parks by July 1 of the year preceding the convening of a legislative session.

(2) The fish and game commission shall present to the legislature by the 15th day of any legislative session a list of areas, sites, or objects that were proposed for purchase for use as state parks, state recreational areas, state monuments, or state historical sites with the money contained in the parks account.

(3) The legislature must appropriate funds from this account before any park, area, monument, or site may be purchased.

History: En. Sec. 3, Ch. 653, L. 1979; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 637, L. 1985.

Cross-References

Disposal of severance taxes for acquisition and maintenance of parks, 15-35-108.

Payment of estate or inheritance taxes by transfer to state of historical or recreational property, 76-16-445 through 76-16-450.

Acquisition of land or waters by Department of Fish, Wildlife, and Parks, 87-1-209.

23-1-109. Establishment of Montana agricultural center and museum of the Northern Great Plains. There is a Montana agricultural center and museum of the Northern Great Plains located in Fort Benton. The department of fish, wildlife, and parks shall have jurisdiction, custody, and control of the center and museum, but shall lease the facility to the city of Fort Benton for so long as the city of Fort Benton provides for development, operation, and maintenance of the center and museum without cost to the state of Montana.

History: **En. Sec. 1, Ch. 255, L. 1987.**

Part 2

State Scientific and Recreational Park

23-1-201. Establishment of state scientific and recreational park. In order to preserve and protect the biological station grounds hereafter referred to and to remove fire hazards and the danger of other encroachments tending to detract from the scientific values and uses thereof, the department is authorized to maintain a state scientific and recreational park on a suitable area to be designated by it not exceeding 15 acres at the southeast portion of the lands granted by the United States of America to the state of Montana for the use of the university of Montana for biological station purposes.

History: **En. Sec. 1, Ch. 108, L. 1941; amd. Sec. 3, Ch. 178, L. 1953; amd. Sec. 4, Ch. 69, L. 1965; amd. Sec. 3, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-310.**

Cross-References

Certain public lands held in trust, Art. X, sec. 11, Mont. Const.

23-1-202. Rules governing use. The department shall make such rules governing the park's use, occupancy, and the protection of the remaining lands of the grant as necessary to promote and continue the use of all of the lands for biological station purposes. The park itself shall be so maintained as to develop and encourage public interest in the scientific and biological resources of the area. Nothing herein contained prevents the use of the area within the park for biological station purposes whenever it becomes useful or necessary for such purposes.

History: **En. Sec. 2, Ch. 108, L. 1941; amd. Sec. 4, Ch. 178, L. 1953; amd. Sec. 5, Ch. 69, L. 1965; amd. Sec. 4, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-311.**

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

CHAPTER 2

RECREATION

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Part 1

Development of Outdoor Recreational Resources

23-2-101. Legislative findings — purpose. Montana is uniquely endowed with scenic landscapes and areas rich in recreational value. This outdoor heritage enriches the lives of citizens, attracts new residents and businesses to the state, and is of major significance to the expanding tourist industry. It is the purpose of this part to give authority to the department of fish, wildlife, and parks to plan and develop outdoor recreational resources in the state, which authority shall permit receiving and expending funds including federal grants for this purpose.

History: **En. Sec. 1, Ch. 235, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-401; amd. Sec. 2, Ch. 218, L. 1979.**

23-2-102. Department of fish, wildlife, and parks to implement federal act. The department of fish, wildlife, and parks is hereby designated as the state agency to represent and act for the state for the purpose of implementing the Land and Water Conservation Fund Act of 1965.

History: **En. Sec. 2, Ch. 235, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-402; amd. Sec. 2, Ch. 218, L. 1979.**

23-2-103. Compliance with federal act authorized — powers of department. The department of fish, wildlife, and parks shall do those things necessary to comply with the provisions of the Land and Water Conservation Fund Act of 1965. Among other things, the department of fish, wildlife, and parks may:

(1) prepare a comprehensive statewide outdoor recreational plan which shall contain an evaluation of the demand for and supply of outdoor recreational resources and facilities in Montana and a program for implementation of the plan;

(2) accept and administer moneys paid by the secretary of the interior for approved projects;

(3) contract with other state agencies, cities, counties, and other political subdivisions of the state, private organizations, and agencies of the federal government;

(4) acquire, other than by eminent domain, and develop outdoor recreational areas and facilities and land and waters and interests in land and waters for such areas and facilities;

(5) for the purpose of implementing the Land and Water Conservation Fund Act of 1965, coordinate its activities with and represent the interests of all agencies of state, city, county, and other governmental units with outdoor recreational responsibilities.

History: **En. Sec. 3, Ch. 235, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-403; amd. Sec. 2, Ch. 218, L. 1979.**

Part 2 reserved

Part 3

Recreational Use of Streams

Part Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

Owner of land bounded by water, 70-16-201.

Limitation of landowner's liability to recreationists, Title 70, ch. 16, part 3.

Title by prescription, 70-19-405.

Aquatic ecosystem protections, Title 75, ch. 7.

Public ways, 85-1-111.

Navigable waters, 85-1-112.

Surface and groundwater, Title 85, ch. 2.

Fish and Wildlife, Title 87.

Navigable waters subject to fishing rights, 87-2-305.

23-2-301. Definitions. For purposes of this part, the following definitions apply:

(1) "Barrier" means an artificial obstruction located in or over a water body, restricting passage on or through the water, which totally or effectively obstructs the recreational use of the surface water at the time of use. A barrier may include but is not limited to a bridge or fence or any other manmade obstacle to the natural flow of water.

(2) "Class I waters" means surface waters, other than lakes, that:

(a) lie within the officially recorded federal government survey meander lines thereof;

(b) flow over lands that have been judicially determined to be owned by the state by reason of application of the federal navigability test for state streambed ownership;

(c) are or have been capable of supporting the following commercial activities: log floating, transportation of furs and skins, shipping, commercial guiding using multiperson watercraft, public transportation, or the transportation of merchandise, as these activities have been defined by published judicial opinion as of April 19, 1985; or

(d) are or have been capable of supporting commercial activity within the meaning of the federal navigability test for state streambed ownership.

(3) "Class II waters" means all surface waters that are not class I waters, except lakes.

(4) "Commission" means the fish and game commission provided for in 2-15-3402.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Diverted away from a natural water body" means a diversion of surface water through a manmade water conveyance system, including but not limited to:

(a) an irrigation or drainage canal or ditch;

(b) an industrial, municipal, or domestic water system, excluding the lake, stream, or reservoir from which the system obtains water;

(c) a flood control channel; or

(d) a hydropower inlet and discharge facility.

(7) "Lake" means a body of water where the surface water is retained by either natural or artificial means and the natural flow of water is substantially impeded.

(8) "Occupied dwelling" means a building used for a human dwelling at least once a year.

(9) "Ordinary high-water mark" means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water marks.

(10) "Recreational use" means with respect to surface waters: fishing, hunting, swimming, floating in small craft or other flotation devices, boating in motorized craft unless otherwise prohibited or regulated by law, or craft propelled by oar or paddle, other water-related pleasure activities, and related unavoidable or incidental uses.

(11) "Supervisors" means the board of supervisors of a soil conservation district, the directors of a grazing district, or the board of county commissioners if a request pursuant to 23-2-311(3)(b) is not within the boundaries of a conservation district or if the request is refused by the board of supervisors of a soil conservation district or the directors of a grazing district.

(12) "Surface water" means, for the purpose of determining the public's access for recreational use, a natural water body, its bed, and its banks up to the ordinary high-water mark.

History: **En. Sec. 1, Ch. 429, L. 1985, and Sec. 1, Ch. 556, L. 1985.**

Cross-References

"Recreational purposes" defined, 70-16-301.

Floodplain and floodway management, Title 76, ch. 5.

23-2-302. Recreational use permitted — limitations — exceptions. (1) Except as provided in subsections (2) through (5), all surface waters that are capable of recreational use may be so used by the public without regard to the ownership of the land underlying the waters.

(2) The right of the public to make recreational use of surface waters does not include, without permission or contractual arrangement with the landowner:

(a) the operation of all-terrain vehicles or other motorized vehicles not primarily designed for operation upon the water;

(b) the recreational use of surface waters in a stock pond or other private impoundment fed by an intermittently flowing natural watercourse;

(c) the recreational use of waters while diverted away from a natural water body for beneficial use pursuant to Title 85, chapter 2, part 2 or 3, except for impoundments or diverted waters to which the owner has provided public access;

(d) big game hunting except by long bow or shotgun when specifically authorized by the commission;

(e) overnight camping within sight of any occupied dwelling or within 500 yards of any occupied dwelling, whichever is less;

(f) the placement or creation of any permanent duck blind, boat moorage, or any seasonal or other objects within sight of or within 500 yards of an occupied dwelling, whichever is less; or

(g) use of a streambed as a right-of-way for any purpose when water is not flowing therein.

(3) The right of the public to make recreational use of class II waters does not include, without permission of the landowner:

(a) big game hunting;

(b) overnight camping;

(c) the placement or creation of any seasonal object; or

(d) other activities which are not primarily water-related pleasure activities as defined in 23-2-301(10).

(4) The right of the public to make recreational use of surface waters does not grant any easement or right to the public to enter onto or cross private property in order to use such waters for recreational purposes.

(5) The commission shall adopt rules pursuant to 87-1-303, in the interest of public health, public safety, or the protection of public and private property, governing recreational use of class I and class II waters. These rules must include the following:

(a) the establishment of procedures by which any person may request an order from the commission:

(i) limiting, restricting, or prohibiting the type, incidence, or extent of recreational use of a surface water; or

(ii) altering limitations, restrictions, or prohibitions on recreational use of a surface water imposed by the commission;

(b) provisions requiring the issuance of written findings and a decision whenever a request is made pursuant to the rules adopted under subsection (5)(a); and

(c) a procedure for the identification of streams within class II waters which are not capable of recreational use or are capable of limited recreational use, and a procedure to restrict the recreational use to the actual capacity of the water.

(6) The provisions of this section do not affect any rights of the public with respect to state-owned lands that are school trust lands or any rights of lessees of such lands.

History: En. Sec. 1, Ch. 429, L. 1985, and Sec. 2, Ch. 556, L. 1985.

Cross-References

Regulation of snowmobiles, Title 23, ch. 2, part 6.

Waterfowl hunting stamp, 87-2-411.

Hunting licenses, Title 87, ch. 2, part 5.

23-2-303 through 23-2-308 reserved.

23-2-309. Land title unaffected. The provisions of this part and the recreational uses permitted by 23-2-302 do not affect the title or ownership of the surface waters, the beds, and the banks of any navigable or nonnavigable waters or the portage routes within this state.

History: En. Sec. 7, Ch. 556, L. 1985.

Cross-References

Ownership of streambed, 70-16-201.

Formation of islands and banks by streams, Title 70, ch. 18, part 2.

23-2-310. Lakes. Nothing contained in this part addresses the recreational use of surface waters of lakes.

History: En. Sec. 8, Ch. 556, L. 1985.

23-2-311. Right to portage — establishment of portage route. (1) A member of the public making recreational use of surface waters may, above the ordinary high-water mark, portage around barriers in the least intrusive manner possible, avoiding damage to the landowner's land and violation of his rights.

(2) A landowner may create barriers across streams for purposes of land or water management or to establish land ownership as otherwise provided by law. If a landowner erects a structure which does not interfere with the public's use of the surface waters, the public may not go above the ordinary high-water mark to portage around the structure.

(3) (a) A portage route around or over a barrier may be established to avoid damage to the landowner's land and violation of his rights, as well as to provide a reasonable and safe route for the recreational user of the surface waters.

(b) A portage route may be established when either a landowner or a member of the recreating public submits a request to the supervisors that such a route be established.

(c) Within 45 days of the receipt of a request, the supervisors shall, in consultation with the landowner and a representative of the department, examine and investigate the barrier and the adjoining land to determine a reasonable and safe portage route.

(d) Within 45 days of the examination of the site, the supervisors shall make a written finding of the most appropriate portage route.

(e) The cost of establishing the portage route around artificial barriers must be borne by the involved landowner, except for the construction of notification signs of such route, which is the responsibility of the department. The cost of establishing a portage route around artificial barriers not owned by the landowner on whose land the portage route will be placed must be borne by the department.

(f) Once the route is established, the department has the exclusive responsibility thereafter to maintain the portage route at reasonable times agreeable to the landowner. The department shall post notices on the stream of the existence of the portage route and the public's obligation to use it as the exclusive means around a barrier.

(g) If either the landowner or recreationist disagrees with the route described in subsection (3)(e), he may petition the district court to name a three-member arbitration panel. The panel must consist of an affected landowner, a member of an affected recreational group, and a member selected by the two other members of the arbitration panel. The arbitration panel may accept, reject, or modify the supervisors' finding under subsection (3)(d).

(h) The determination of the arbitration panel is binding upon the landowner and upon all parties that use the water for which the portage is provided. Costs of the arbitration panel, computed as for jurors' fees under 3-15-201, shall be borne by the contesting party or parties; all other parties shall bear their own costs.

(i) The determination of the arbitration panel may be appealed within 30 days to the district court.

(j) Once a portage route is established, the public shall use the portage route as the exclusive means to portage around or over the barrier.

(4) Nothing contained in this part addresses the issue of natural barriers or portage around said barriers, and nothing contained in this part makes such portage lawful or unlawful.

History: En. Sec. 3, Ch. 556, L. 1985.

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.
Owner of land bounded by water, 70-16-201.
Public ways, 85-1-111.
Navigable waters, 85-1-112.

23-2-312 through 23-2-320 reserved.

23-2-321. Restriction on liability of landowner and supervisor. (1) A person who makes recreational use of surface waters flowing over or through land in the possession or under the control of another, pursuant to 23-2-302, or land while portaging around or over barriers or while portaging or using portage routes, pursuant to 23-2-311, is owed no duty by a landowner, his agent, or his tenant other than that provided in subsection (2).

(2) A landowner, his agent, or tenant is liable to a person making recreational use of waters or land described in subsection (1) only for an act or omission that constitutes willful or wanton misconduct.

(3) No supervisor or any member of the arbitration panel who participates in a decision regarding the placement of a portage route is liable to any person who is injured or whose property is damaged because of placement or use of the portage route except for an act or omission that constitutes willful and wanton misconduct.

History: **En. Sec. 4, Ch. 556, L. 1985; amd. Sec. 1, Ch. 209, L. 1987.**

Compiler's Comments

1987 Amendment: Near end of (1), before "is owed no duty", deleted "does not have the status of invitee or licensee and".

Cross-References

Liability, Title 27, ch. 1, part 7.

Limitation of landowner liability to recreationists, Title 70, ch. 16, part 3.

23-2-322. Prescriptive easement not acquired by recreational use of surface waters. (1) A prescriptive easement is a right to use the property of another that is acquired by open, exclusive, notorious, hostile, adverse, continuous, and uninterrupted use for a period of 5 years.

(2) A prescriptive easement cannot be acquired through:

(a) recreational use of surface waters, including:

(i) the streambeds underlying them;

(ii) the banks up to the ordinary high-water mark; or

(iii) any portage over and around barriers; or

(b) the entering or crossing of private property to reach surface waters.

History: **En. Sec. 5, Ch. 556, L. 1985.**

Cross-References

Title by prescription, 70-19-405.

Part 4 reserved

Part 5

Boats

23-2-501. Declaration of policy. It is the policy of this state to promote safety for persons and property in and connected with the use, operation, and equipment of vessels and to promote uniformity of laws relating thereto.

History: **En. Sec. 1, Ch. 285, L. 1959; R.C.M. 1947, 69-3501.**

23-2-502. Definitions. As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Certificate of number" means the certificate issued annually by the county treasurer to the owner of a motorboat or by the department of justice to dealers or manufacturers, assigning such motorboat an identifying number and containing such information as required.

(2) "Certificate of ownership" means a certificate issued by the department of justice identifying the owner of a motorboat or sailboat 12 feet in length or longer.

(3) "Dealer" means any person who engages in whole or in part in the business of buying, selling, or exchanging new and unused vessels or used vessels, or both, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.

(4) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(5) "Documented vessel" means a vessel which has and is required to have a valid marine document as a vessel of the United States.

(6) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat.

(7) "License decals" means the serially numbered license stickers issued annually by the county treasurer and displayed as required by law.

(8) "Lienholder" means a person holding a security interest.

(9) "Manufacturer" means any person engaged in the business of manufacturing or importing new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

(10) "Motorboat" means any vessel propelled by any machinery, motor, or engine of any description, whether or not such machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines but does not include a vessel which has a valid marine document issued by the U.S. coast guard of the United States government or any federal agency successor thereto.

(11) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(12) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

(13) "Owner" means a person, other than a lien holder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(14) "Passenger" means every person carried on board a vessel other than:

(a) the owner or his representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or

(d) any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his carriage.

(15) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(16) "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation and is valid against third parties generally.

(17) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

(18) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(19) "Waters of this state" means any waters within the territorial limits of this state. *(Subsections (2), (3), (8), (9), and (16) effective July 1, 1988—sec. 8, Ch. 433, L. 1987.)*

History: En. Sec. 2, Ch. 285, L. 1959; amd. Sec. 1, Ch. 230, L. 1963; amd. Sec. 44, Ch. 391, L. 1973; amd. Sec. 1, Ch. 514, L. 1973; amd. Sec. 5, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3502; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 4, Ch. 433, L. 1987.

Compiler's Comments

1987 Amendment: Inserted (2), (3), (8), (9), and (16).

23-2-503. Boat liveries. (1) The owner of a boat livery shall cause to be kept a record of the name and address of the person or persons hiring any vessel which is permitted by him to be operated, the identification number of such vessel, the departure date and time, and the expected time of return. The record shall be preserved for at least 6 months.

(2) Neither the owner of a boat livery nor his agent or employee shall permit any motorboat or any vessel permitted by him to be operated as a motorboat or vessel to depart from his premises unless it shall have been provided, either by owner or renter, with the equipment required pursuant to 23-2-521 and any rules made pursuant thereto.

History: En. Sec. 7, Ch. 285, L. 1959; amd. Sec. 9, Ch. 124, L. 1977; R.C.M. 1947, 69-3507.

23-2-504. Filing of rules. A copy of the rules adopted pursuant to this part and of any amendments thereto shall be filed in the office of the department and in the office of the secretary of state. Rules shall be published by the department in a convenient form and made easily available to all vessel operators.

History: En. Sec. 16, Ch. 285, L. 1959; amd. Sec. 15, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3516.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

23-2-505. Owner's civil liability. The owner of a vessel shall be liable for any injury or damage occasioned by the negligent operation of such vessel, whether such negligence consists of a violation of the provisions of the statutes of this state or neglecting to observe such ordinary care and such operation as the rules of the common law require. The owner shall not be liable, however, unless such vessel is being used with his or her express or implied consent. It shall be presumed that such vessel is being operated with the knowledge and consent of the owner if, at the time of the injury or damage, it is under the control of his or her spouse, father, mother, brother, sister, son, daughter, or other immediate member of the owner's family. Nothing contained herein shall be construed to relieve any other person from any liability which he would otherwise have, but nothing contained herein shall be construed to authorize or permit any recovery in excess of injury or damage actually incurred.

History: **En. Sec. 15, Ch. 285, L. 1959; R.C.M. 1947, 69-3515.**

Cross-References

Liability for negligence and intentional torts, Title 27, ch. 1, part 7.

23-2-506. Enforcement. It shall be the duty of the department to enforce the sections of this law. The state fish, wildlife, and parks director shall employ all the necessary personnel to comply with this section. All sheriffs and peace officers of the state of Montana and all United States coast guard law enforcement officers shall have authority to enforce provisions of this part, as amended.

History: **En. Sec. 17, Ch. 285, L. 1959; amd. Sec. 2, Ch. 336, L. 1969; amd. Sec. 14, Ch. 514, L. 1973; amd. Sec. 17, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3517; amd. Sec. 2, Ch. 218, L. 1979.**

23-2-507. Penalty. Violations of any section of this part, except 23-2-526(3), unless otherwise specified shall be a misdemeanor and be punishable by fine of not less than $15 or more than $500 or by imprisonment up to 6 months or by both such fine and imprisonment. All fine and bond forfeitures, except those paid to a justice's court, shall be transmitted to the state treasurer, who shall deposit such fines and forfeitures in the motorboat account of an earmarked fund. The moneys shall be used only by the department for enforcement of this part, as amended.

History: **En. Sec. 18, Ch. 285, L. 1959; amd. Sec. 15, Ch. 514, L. 1973; amd. Sec. 18, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3518; amd. Sec. 17, Ch. 557, L. 1987.**

Compiler's Comments

1987 Amendment: Near beginning of second sentence, after "forfeitures", inserted "except those paid to a justice's court"; and made minor changes in phraseology.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Fish and Wildlife Crimestoppers Act, Title 87, ch. 5, part 6.

23-2-508. *(Effective July 1, 1988)* **Certificate of ownership.** (1) Except as provided in subsection (9), no motorboat or sailboat 12 feet in length or longer may be operated upon the waters of the state unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state.

(2) The owner of a motorboat or sailboat 12 feet in length or longer shall apply for a certificate of ownership and a certificate of number with the county treasurer of the county in which the owner resides, upon forms furnished by the department of justice. The forms must require the following information:

(a) name of the owner;
(b) residence of the owner, by town or county;
(c) business or home address of the owner;
(d) name and address of any lienholder;
(e) amount due under any contract or lien;
(f) name of the manufacturer;
(g) model number or name;

(h) identification number;

(i) name and address of the dealer or other person from whom acquired, if known; and

(j) such other information as the department of justice may require.

(3) The application is to be accompanied by documentation of ownership, such as an invoice, bill of sale, foreign title, official certificate of boat number, fee in lieu of tax receipt, or a certificate of ownership of a trailer purchased with the motorboat or sailboat. An applicant who fails to provide such proof of ownership shall provide a certified statement describing how the motorboat or sailboat 12 feet in length or longer was acquired, from whom acquired if known, and other information requested by the department of justice.

(4) If a certificate of ownership has previously been issued under the provisions of this part, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to motorboats or sailboats 12 feet in length or longer that are purchased as new and unused vessels or that were operated when the provisions of this part were not in force and effect.

(5) Any motorboat or sailboat 12 feet in length or longer that does not have a manufacturer's or other identifying number thereon must be assigned an identification number by the department of fish, wildlife, and parks. A fee of $1 must be paid to the department for an assignment of number.

(6) Upon completion of the application, the county treasurer shall issue to the applicant two copies of the certificate of number application, one of which must be marked "file copy". The treasurer shall forward one copy and the original application for a certificate of ownership to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office, and shall furnish the applicant a certificate of ownership containing that information in the application considered necessary by the department and a permanent boat number. The certificate of ownership need not be renewed annually and is valid as long as the person holding it owns the vessel.

(7) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(8) Upon application for a certificate of ownership, a fee of $6 must be paid to the county treasurer, $4 of which must be forwarded by the county treasurer to the department of justice and deposited in the motor vehicle recording account of the state special revenue fund.

(9) A person who, on July 1, 1988, is the owner of a motorboat or sailboat 12 feet in length or longer with a valid certificate of number issued by the state is not required to file an application for a certificate of ownership for the motorboat or sailboat unless he transfers a part of his interest in the motorboat or sailboat or he renews the certificate of number for the motorboat or sailboat.

History: En. Sec. 1, Ch. 433, L. 1987; amd. Sec. 13, Ch. 649, L. 1987.

Compiler's Comments

1987 Amendment: In (3), before "tax receipt", the Code Commissioner inserted "fee in lieu of" and after "tax receipt" deleted "certification from the department of revenue that the motorboat or sailboat 12 feet in length or longer is listed with the applicant's taxable property", pursuant to sec. 13, Ch. 649, L. 1987, directing the Code Commissioner to change references to taxes on boats to reflect the fee in lieu of tax on boats imposed by Ch. 649, L. 1987. Amendment applicable to motorboats and sailboats registered on or after January 1, 1988.

23-2-509. *(Effective July 1, 1988)* **Lost or mutilated certificate.** (1) If a certificate of ownership is lost or mutilated or becomes illegible, the person to whom it was issued shall immediately make application for and obtain a duplicate, upon payment of a fee of $6.

(2) The duplicate certificate of ownership must be plainly marked "duplicate" across its face and be mailed or delivered to the applicant.

History: **En. Sec. 2, Ch. 433, L. 1987.**

23-2-510. *(Effective July 1, 1988)* **Transfer of interest.** (1) Except as provided in subsection (3), upon a transfer of a certificate of ownership to a motorboat or sailboat 12 feet in length or longer registered as required under the provisions of this part, the person whose title or interest is to be transferred shall sign the certificate of ownership issued for the motorboat or sailboat in the appropriate space provided on the reverse side of the certificate, and such signature must be acknowledged before a notary public.

(2) Within 20 calendar days thereafter, the transferee shall make application for transfer of the certificate of ownership so endorsed with the county treasurer of the county in which the transferee resides and also make application for registration of the motorboat or sailboat. The county treasurer shall forward the application to the department of justice, which shall file the certificate upon receipt. No certificate of ownership may be issued by the department until any outstanding certificate is surrendered to the department or its loss is established to the department's reasonable satisfaction. The county treasurer shall collect a fee of $6 for each application for transfer of ownership, of which $4 must be forwarded to the department of justice for deposit in the motor vehicle recording account of the state special revenue fund.

(3) A purchaser of a new or used motorboat or sailboat 12 feet in length or longer from a licensed dealer has a grace period of 20 calendar days from the date of purchase to register the motorboat or sailboat, make application for a certificate of ownership, and obtain a decal indicating that the fee in lieu of property tax has been paid on the vessel for the current year. It is not a violation of this part or any other law for the purchaser to operate a newly acquired motorboat or sailboat 12 feet in length or longer without a certificate of ownership, certificate of registration, and decal during the 20-day grace period. During this period the sticker provided for in subsection (4) must remain affixed to the motorboat or sailboat.

(4) Prior to the delivery of a motorboat or sailboat 12 feet in length or longer to the purchaser, the dealer shall issue and affix to a motorboat or sailboat constructed after October 31, 1972, a sticker as prescribed by the department of justice. The sticker must contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the motorboat or sailboat, including its serial number. The dealer shall keep a copy of the sticker for his records and shall send a copy of the sticker to the department of justice.

(5) The provisions of subsection (2) do not apply in the event of the transfer of a motorboat or sailboat 12 feet in length or longer to a duly

licensed dealer intending to resell the motorboat or sailboat and who operates it only for demonstration purposes, but every such dealer, upon transferring such interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of this part. The department of justice, upon receipt of the certificate of ownership and application for a new certificate containing notice of a security interest, if any, shall issue a new certificate of ownership, together with a statement of any conditional sales contract, mortgage, or other lien.

History: **En. Sec. 3, Ch. 433, L. 1987.**

23-2-511. Operation of unnumbered motorboats prohibited — display of decals. (1) Every motorboat on the waters of this state, propelled by a motor or an engine of any description, must be properly numbered and display valid license decals. No person may operate or give permission for the operation of any motorboat on such waters unless the motorboat is numbered and displays valid license decals in accordance with this part, with applicable federal law, or with a federally approved numbering system of another state and unless:

(a) the certificate of number assigned to the motorboat is in full force and effect;

(b) the identifying number set forth in the certificate of number and the valid license decals are displayed on such motorboat; and

(c) a temporary permit has been obtained from the county in which the boat is being operated if that county requires a temporary permit for out-of-state motorboats, as provided in 7-16-2121.

(2) Upon transfer of ownership of a motorboat from a registered boat dealer or manufacturer, the transferred motorboat may be operated on the waters of this state for 20 consecutive calendar days immediately following the transfer of ownership without displaying the numbers and license decal required by subsection (1) provided that when the motorboat is operated during those 20 consecutive calendar days, a bill of sale or other evidence of transfer reciting the date of the transfer of ownership is retained in the motorboat and is exhibited to a warden or other officer upon request.

History: **En. Sec. 3, Ch. 285, L. 1959; amd. Sec. 1, Ch. 348, L. 1969; amd. Sec. 2, Ch. 514, L. 1973; amd. Sec. 1, Ch. 306, L. 1975; amd. Sec. 6, Ch. 124, L. 1977; R.C.M. 1947, 69-3503; amd. Sec. 1, Ch. 136, L. 1979; amd. Sec. 1, Ch. 311, L. 1985; amd. Sec. 1, Ch. 118, L. 1987.**

Compiler's Comments

1987 Amendment: Inserted (1)(c).

23-2-512. Identification number. (1) The owner of each motorboat or sailboat requiring numbering by this state shall file an application for number in the office of the county treasurer where the motorboat or sailboat is owned on forms prepared and furnished by the department of justice. The application must be signed by the owner of the motorboat or sailboat and be accompanied by a fee of $2. Any alteration, change, or false statement contained in the application will render the certificate of number void. Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the department of justice, stating the number assigned to the motorboat or sailboat and the name and address of the owner.

(2) The applicant, upon the filing of the application, shall pay to the county treasurer the fee in lieu of tax required for a motorboat 10 feet in length or longer or a sailboat 12 feet in length or longer for the current year of certification before the application for certification or recertification may be accepted by the county treasurer.

(3) Should the ownership of a motorboat or sailboat change, a new application form with the certification fee must be filed within a reasonable time with the county treasurer and a new certificate of number assigned in the same manner as provided for in an original assignment of number.

(4) If an agency of the United States government has in force a comprehensive system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this part by the department of justice must be in conformity.

(5) Every certificate of number and the license decals assigned under this part continues in effect for a period not to exceed 1 year unless terminated or discontinued in accordance with the provisions of this part. Certificates of number and license decals must show the date of expiration and may be renewed by the owner in the same manner provided for in the initial securing of the certificate.

(6) Certificates of number expire on December 31 of each year and may not be in effect unless renewed under this part.

(7) In event of transfer of ownership, the purchaser shall furnish the county treasurer notice within a reasonable time of the acquisition of all or any part of his interest, other than the creation of a security interest, in a motorboat or sailboat numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat or sailboat. The transfer, loss, theft, destruction, or abandonment terminates the certificate of number for the motorboat or sailboat. Recovery from theft or transfer of a part interest that does not affect the owner's right to operate the motorboat or sailboat does not terminate the certificate of number.

(8) A holder of a certificate of number shall notify the county treasurer within reasonable time if his address no longer conforms to the address appearing on the certificate and furnish the county treasurer with his new address. The department of justice may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(9) (a) The number assigned must be painted on or attached to each outboard side of the forward half of the motorboat or sailboat or, if there are no such sides, at a corresponding location on both outboard sides of the foredeck of the motorboat or sailboat. The number assigned must read from left to right in Arabic numerals and block characters of good proportion at least 3 inches tall excluding border or trim of a color that contrasts with the color of the background and be so maintained as to be clearly visible and legible. The number may not be placed on the obscured underside of the flared bow where it cannot be easily seen from another vessel or ashore. No numerals, letters, or devices other than those used in connection with the identifying number issued may be placed in the proximity of the identifying number. No numerals, letters, or devices that might interfere with the ready

identification of the motorboat or sailboat by its identifying number may be carried as to interfere with the motorboat's or sailboat's identification. No number other than the number and license decal assigned to a motorboat or sailboat or granted reciprocity under this part may be painted, attached, or otherwise displayed on either side of the forward half of the motorboat or sailboat.

(b) The certificate of number shall be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat or sailboat whenever the motorboat or sailboat is on waters of this state.

(c) Boat liveries are not required to have the certificate of number on board each motorboat or sailboat, but a rental agreement must be carried on board livery motorboats or sailboats in place of the certificate of number.

(10) Fees, other than the fee in lieu of tax, collected under this section shall be transmitted to the state treasurer, who shall deposit the fees in the motorboat or sailboat certificate identification account of the state special revenue fund. These fees shall be used only for the administration and enforcement of this part, as amended.

(11) An owner of a motorboat or sailboat must within a reasonable time notify the department of justice, giving the motorboat's or sailboat's identifying number and the owner's name when the motorboat or sailboat is transferred, lost, destroyed, abandoned, or frauded or within 60 days after change of state of principal use or if a motorboat becomes documented as a vessel of the United States.

History: En. Sec. 4, Ch. 285, L. 1959; amd. Sec. 1, Ch. 219, L. 1961; amd. Sec. 1, Ch. 336, L. 1969; amd. Sec. 2, Ch. 348, L. 1969; amd. Sec. 45, Ch. 391, L. 1973; amd. Sec. 51, Ch. 511, L. 1973; amd. Sec. 3, Ch. 514, L. 1973; amd. Sec. 1, Ch. 52, L. 1974; amd. Sec. 7, Ch. 124, L. 1977; amd. Sec. 45, Ch. 566, L. 1977; R.C.M. 1947, 69-3504(1), (2), (3), (6) thru (14); amd. Sec. 2, Ch. 136, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 312, L. 1985; amd. Sec. 6, Ch. 649, L. 1987.

Compiler's Comments

1987 Amendment: Throughout section, after "motorboat", inserted "or sailboat(s)('s)"; in first sentence of (1), after "owned", deleted "or taxable" and in second sentence increased application fee from $1 to $2; deleted former (2) that read: "(2) Before filing the application with the county treasurer, the applicant shall submit it to the county assessor, who shall enter on the application, in a space to be provided for that purpose, the market value and taxable value of the motorboat for the year for which the application for registration is made"; in (2) substituted "fee in lieu of tax required for a motorboat 10 feet in length or longer or a sailboat 12 feet in length or longer" for "registration fee and the personal property taxes assessed against the motorboat or vessel" and in three places substituted "certification" and "recertification" for "registration" and "reregistration"; in (3), before "fee", inserted "the certification"; in (10), after "Fees", inserted "other than the fee in lieu of tax"; and in (11) made minor changes in phraseology. Amendment applicable to motorboats and sailboats registered on or after January 1, 1988.

23-2-513. Dealer's identification number. (1) A dealer or manufacturer may apply directly to the department of justice for one identifying number and one or more certificates of number. A dealer's or manufacturer's identifying number shall be displayed on his boat while the boat is operating for a purpose related to the buying, selling, or exchanging of the boat by the dealer or manufacturer.

(2) The application for a dealer's or manufacturer's identifying number must include his name and business address. Each dealer or manufacturer will have one identifying number assigned to his business.

(3) An application for dealer's or manufacturer's identifying number and certificate of number must be accompanied by the following fees:

(a) for the identifying number, first certificate of number, and set of license decals, $5;

(b) for each additional certificate of number and set of license decals applied for in any application, $2.

(4) The department of justice shall issue certificates of number for the identifying numbers assigned to a dealer or manufacturer in the same manner as provided in 23-2-512(1) and (10), as amended, except that no boat may be described in the certificate and each certificate must state that the identifying number has been assigned to a dealer or manufacturer. A dealer's or manufacturer's certificate of number expires on December 31 of the year for which it is issued.

(5) A dealer's or manufacturer's identifying number shall be displayed in the same manner as provided in 23-2-512(10), as amended, except that the number may be temporarily attached. The last three letters shall be "DLR" for dealer and "MFR" for manufacturer. These letters shall be included, respectively, in dealer or manufacturer identification numbers only.

(6) No person other than a dealer or manufacturer or an employee of a dealer or manufacturer may display or use a dealer's or manufacturer's identifying number. A dealer's or manufacturer's identifying number may be displayed only on motorboats owned by the dealer or manufacturer.

(7) No dealer or manufacturer or employee of a dealer or manufacturer may use a dealer's or manufacturer's identifying number for any purpose other than the purpose described in subsection (1) of this section.

History: En. Sec. 4, Ch. 285, L. 1959; amd. Sec. 1, Ch. 219, L. 1961; amd. Sec. 1, Ch. 336, L. 1969; amd. Sec. 2, Ch. 348, L. 1969; amd. Sec. 45, Ch. 391, L. 1973; amd. Sec. 51, Ch. 511, L. 1973; amd. Sec. 3, Ch. 514, L. 1973; amd. Sec. 1, Ch. 52, L. 1974; amd. Sec. 7, Ch. 124, L. 1977; amd. Sec. 45, Ch. 566, L. 1977; R.C.M. 1947, 69-3504(4), (5); amd. Sec. 3, Ch. 136, L. 1979; amd. Sec. 2, Ch. 312, L. 1985.

23-2-514. Exemption from numbering provisions. A motorboat is not required to be numbered under this part if it is:

(1) covered by a number in full force and effect that has been assigned to it pursuant to federal law or a federally approved numbering system of another state, provided that such vessel shall not have been within this state for a period in excess of 90 consecutive days. After 90 consecutive days within this state, this state becomes the motorboat's state of principal use and the owner must apply for a Montana number, certificate of number, and license decal.

(2) a motorboat from a country other than the United States temporarily using the waters of this state;

(3) a motorboat whose owner is the United States, a state, or subdivision thereof;

(4) a ship's lifeboat.

History: En. Sec. 6, Ch. 285, L. 1959; amd. Sec. 6, Ch. 514, L. 1973; R.C.M. 1947, 69-3506; amd. Sec. 4, Ch. 136, L. 1979; amd. Sec. 1, Ch. 168, L. 1979.

23-2-515. License decals to be displayed. (1) Every Montana motorboat or sailboat numbered in accordance with the provisions of 23-2-512 and

23-2-513 shall be required to display license decals. For this purpose the county treasurer, upon proof of payment of the fee in lieu of tax for motorboats 10 feet in length or longer and sailboats 12 feet in length or longer as required by 15-16-202, shall issue a pair of decals prepared and furnished by the department of justice with all new certificates of number and renewals thereof.

(2) The decals shall be of a style and design prescribed by the department of justice and shall be a color differing from the preceding year. The license decal will be serially numbered and have the expiration date of December 31 of the appropriate year printed thereon.

(3) License decals shall be displayed only in the following manner: one valid license decal on each side of the forward half, 3 inches aft of the identifying numbers.

History: En. Sec. 3, Ch. 348, L. 1969; amd. Sec. 46, Ch. 391, L. 1973; amd. Sec. 4, Ch. 514, L. 1973; amd. Sec. 2, Ch. 52, L. 1974; R.C.M. 1947, 69-3504.1; amd. Sec. 3, Ch. 312, L. 1985; amd. Sec. 2, Ch. 421, L. 1987; amd. Sec. 7, Ch. 649, L. 1987.

Compiler's Comments

1987 Amendments — Composite Section: Chapter 421 in (1) substituted "as required by 15-16-202" for "for the current year".

Chapter 649 near beginning of (1) substituted "motorboat or sailboat" for "boat" and in second sentence substituted "the fee in lieu of tax for motorboats 10 feet in length or longer and sailboats 12 feet in length or longer" for "a certificate of tax of personal property showing payment of tax on the motorboat". Amendment applicable to motorboats and sailboats registered on or after January 1, 1988.

In preparation of the composite of the Ch. 421 and Ch. 649 amendments to this section, the Code Commissioner, pursuant to the instructions in sec. 13, Ch. 649, to change references to taxes on boats to references to the fee in lieu of tax on boats, in (1) changed "receipt of a certificate of tax" to "proof of payment of the fee in lieu of tax".

23-2-516. Fee in lieu of tax for motorboats 10 feet in length or longer and sailboats 12 feet in length or longer. (1) There is a fee in lieu of property tax as prescribed in 23-2-517 imposed on motorboats 10 feet in length or longer and sailboats 12 feet in length or longer. The fee is in addition to the annual fee required by 23-2-512 for filing of the application for a certificate of number.

(2) The fee imposed by subsection (1) need not be paid by a dealer for motorboats or sailboats that constitute inventory of the dealership. *(Applicable to motorboats and sailboats registered on or after January 1, 1988.)*

History: En. Sec. 8, Ch. 649, L. 1987.

23-2-517. Fees for motorboats and sailboats. (1) The owner of a motorboat 10 feet in length or longer or a sailboat 12 feet in length or longer shall pay a fee based on the length of the motorboat or sailboat.

(2) The fee for a motorboat at least 10 feet in length but less than 14 feet in length or sailboat at least 12 feet in length but less than 14 feet in length is $7.50.

(3) The fee for a motorboat or sailboat at least 14 feet in length but less than 16 feet in length is $15.

(4) The fee for a motorboat or sailboat at least 16 feet in length but less than 17 feet in length is $32.

(5) The fee for a motorboat or sailboat at least 17 feet in length but less than 19 feet in length is $3 a foot or fraction of a foot.

(6) The fee for a motorboat or sailboat 19 feet in length or longer is $4 a foot or fraction of a foot. *(Applicable to motorboats and sailboats registered on or after January 1, 1988.)*

History: **En. Sec. 9, Ch. 649, L. 1987.**

23-2-518. Disposition of fees in lieu of tax. The county treasurer shall distribute all fees in lieu of tax collected on motorboats 10 feet in length or longer and sailboats 12 feet in length or longer pursuant to 23-2-516 and 23-2-517 in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed. *(Applicable to motorboats and sailboats registered on or after January 1, 1988.)*

History: **En. Sec. 10, Ch. 649, L. 1987.**

23-2-519. Penalty — disposition. (1) Failure to pay the fee in lieu of tax as provided for in 23-2-517 is a misdemeanor, punishable by a fine equal to five times the fee in lieu of tax that is due on the motorboat or sailboat for the current year of registration.

(2) All fines collected pursuant to subsection (1) must be distributed in the following ratio:

(a) 50% to the general fund of the county in which the motorboat or sailboat is issued a certification number; and

(b) 50% to the motorboat account of the state special revenue fund for use by the department in the enforcement of this part. *(Applicable to motorboats and sailboats registered on or after January 1, 1988.)*

History: **En. Sec. 11, Ch. 649, L. 1987.**

23-2-520 reserved.

23-2-521. Equipment. (1) Every motorboat or vessel shall have aboard:

(a) one United States coast guard approved personal flotation device in good and serviceable condition for each person on board, provided that any person who has not reached his 12th birthday shall have a United States coast guard approved life preserver properly fastened to his person when occupying a motorboat or vessel under 26 feet in length while such motorboat or vessel is in motion;

(b) if carrying or using any inflammable or toxic fluid in any enclosure for any purpose and if the motorboat or vessel is not an entirely open one, an efficient natural or mechanical ventilation system prescribed by the department which shall be used and be capable of removing resulting gases prior to and during the time the motorboat or vessel is occupied by a person;

(c) hand portable fire extinguishers approved by the United States coast guard, the number of which is to be determined by the department, or a United States coast guard approved fixed fire extinguishing system, except that motorboats less than 26 feet in length of entirely open construction, propelled by outboard motors, and not carrying passengers for hire need not carry such portable fire extinguishers or fire extinguishing systems.

(2) Every motorboat or vessel shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel equipped with an efficient flame arrester, backfire trap, or other similar device.

(3) (a) Except as provided in subsection (3)(b), the exhaust of every internal combustion engine used on a motorboat or vessel must be muffled either by discharge underwater or by a functioning muffler capable of muffling exhaust noise at full throttle to 86 dbA or less when measured at a distance of 50 feet. The muffler may not be modified or altered, such as by a cutout. The department may require a test at dockside to determine exhaust noise level.

(b) The provisions of subsection (3)(a) do not apply to a motorboat:

(i) competing in a state-sanctioned regatta or boat race while on trial runs between 9 a.m. and 5 p.m. and during a period not more than 48 hours immediately preceding the regatta or boat race; or

(ii) operating under a separate permit issued by the department for the purpose of tuning engines, making test or trial runs, or competing in official trials for speed records other than in connection with regattas or boat races.

(4) (a) Except as provided in subsection (4)(b), no vessel may be equipped with a siren, and no person may use or install a siren on a vessel.

(b) An authorized emergency vessel may be equipped with a siren capable of sound audible under normal conditions from a distance of not less than 500 feet, but the siren may be used only when the vessel is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, and the operator of the vessel shall sound the siren when necessary to warn persons of the vessel's approach.

(5) When in operation or at anchor or moored away from a docking facility between sunset and sunrise, all vessels shall display lights as prescribed by the department.

(6) The department may designate waters where and the time of year on these waters when all persons aboard a motorboat or vessel must wear approved life preservers at all times.

(7) Vessels, including houseboats and floating cabins, equipped with a galley or toilet shall have a wastewater holding system sealed to prevent the discharge of water-carried waste products, whether treated or untreated, into the surrounding waters.

(8) The department may adopt rules modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation and safety laws or with the navigation and safety rules promulgated by the United States coast guard.

(9) A person may not operate or give permission for the operation of a vessel which is not equipped as required by this section.

History: En. Sec. 5, Ch. 285, L. 1959; amd. Sec. 1, Ch. 138, L. 1961; amd. Sec. 2, Ch. 230, L. 1963; amd. Sec. 1, Ch. 169, L. 1965; amd. Sec. 52, Ch. 511, L. 1973; amd. Sec. 5, Ch. 514, L. 1973; amd. Sec. 1, Ch. 305, L. 1975; amd. Sec. 8, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3505; amd. Sec. 1, Ch. 348, L. 1987.

Compiler's Comments

1987 Amendment: Inserted (3) and (4).

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

23-2-522. Discharge of waste from vessel prohibited. No person shall discharge or cause, permit, or suffer to be discharged any garbage, refuse, waste, or sewage from any vessel into, upon, or near the waters at any stream, river, or lake within the boundaries of the state of Montana.

History: En. Sec. 2, Ch. 169, L. 1965; amd. Sec. 8, Ch. 514, L. 1973; amd. Sec. 11, Ch. 124, L. 1977; R.C.M. 1947, 69-3508.1.

23-2-523. Prohibited operation and mooring — enforcement. (1) No person may operate or knowingly permit any person to operate any motorboat or vessel or manipulate any water skis, surfboard, or similar device or other contrivance in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(2) No person may operate any motorboat, including a sailboat propelled by a motor of any kind, or manipulate any water skis, surfboard, or similar device attached to a motorboat while under the influence of alcohol or drugs.

(3) It is unlawful for the owner of any motorboat or vessel or any person having such in charge or in control to authorize or knowingly permit the same to be operated by any person who by reason of physical or mental disability is incapable of operating such watercraft under the prevailing circumstances.

(4) No person may operate or knowingly permit any person to operate any motorboat or vessel at a rate of speed greater than will permit such person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. However, nothing in this part is intended to prevent the operator of a vessel actually competing in a regatta which is sanctioned by an appropriate governmental unit from attempting to attain high speeds on a marked racing course.

(5) No person may make a reckless approach to, departure from, or passage by a dock, ramp, diving board, or float.

(6) Skiers being pulled by motorboats must have on their person a life preserver, buoyant vest, or ski belt.

(7) No person may moor a vessel to any of the buoys or beacons placed in any waters of this state by the authority of the United States, an agency of the United States, or the department or in any manner hang on with a vessel to such buoy or beacon, except in the act of maintenance work on such buoy or beacon, nor may any person deface, remove, or destroy any such buoy, beacon, or other authorized navigational marker maintained in the waters of this state.

(8) If an officer whose duty it is to enforce the sections of this law observes a vessel being used without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition and in his judgment such use creates an especially hazardous condition, he may direct the operator to take whatever immediate and reasonable steps would be necessary for the safety of those aboard the vessel, including directing the operator to return to mooring or launching site and to remain there until the situation creating the hazard is corrected or ended.

History: En. Sec. 8, Ch. 285, L. 1959; amd. Sec. 7, Ch. 514, L. 1973; amd. Sec. 10, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3508; amd. Sec. 1, Ch. 497, L. 1987.

Compiler's Comments

1987 Amendment: Substituted present (2) for former (2) that read: "No person may operate or knowingly permit any person to operate any motorboat or vessel or manipulate any water skis, surfboard, or similar device or other contrivance while intoxicated or under the influence of any narcotic drug, barbiturate, or marijuana."

23-2-524. Passing rule and right-of-way. (1) When two vessels are approaching each other "head on" or nearly so (so as to involve risk of collision), each vessel shall bear to the right and pass the other vessel on its left side.

(2) When vessels approach each other obliquely or at right angles, the vessel approaching on the right side has the right-of-way.

(3) One vessel may overtake another on either side but shall grant right-of-way to the overtaken vessel.

(4) When a sailboat and motorboat are operating as to involve a risk of collision with each other, the motorboat shall yield the right-of-way to the sailboat in all cases.

History: En. Sec. 9, Ch. 285, L. 1959; R.C.M. 1947, 69-3509.

23-2-525. Restricted areas. (1) No person shall so anchor a vessel or other obstacle for fishing or pleasure purposes on any body of water over which the state has jurisdiction in such a position as to obstruct a passageway ordinarily used by other vessels.

(2) No person shall operate a pleasure vessel within 20 feet of the exterior boundary of a water area which is clearly marked by buoys or some other distinguishing device as a bathing or swimming area. Swimming areas shall be marked with white buoys having international orange markings in conformance with the uniform state waterway marking system by the owners of such areas.

(3) No person shall, without permission, operate or knowingly permit any person to operate a vessel within 50 feet of a person engaged in fishing, unless unavoidable.

History: En. Sec. 10, Ch. 285, L. 1959; amd. Sec. 10, Ch. 514, L. 1973; R.C.M. 1947, 69-3510.

23-2-526. Overloading — overpowering — noise limitations. (1) No vessel shall be loaded with passengers or cargo beyond its safe carrying capacity, taking into consideration weather and other normal operating conditions.

(2) No vessel shall be equipped with any motor or other propulsion machinery beyond its safe power capacity, taking into consideration the type and construction of such watercraft and other existing operating conditions.

(3) For the purposes of 45-8-101 and 45-8-111, the operation of a motorboat that emits noise in excess of 86 dbA when measured at a distance of 50 feet is presumed to be a public nuisance and constitute disorderly conduct, except when otherwise lawfully operated under a motorboat racing permit issued by a political subdivision of the state.

History: En. Sec. 11, Ch. 285, L. 1959; R.C.M. 1947, 69-3511; (3)En. Sec. 2, Ch. 694, L. 1983.

23-2-527. Collisions, accidents, and casualties. (1) The operator of a vessel involved in a collision, accident, or other casualty, so far as he can do so without serious danger to his own vessel, crew, and passengers (if any), shall render to other persons affected by the collision, accident, or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty and give his name, address, and identification of his vessel in writing to any person injured and to the owner or person in control of any property damaged in the collision, accident, or other casualty.

(2) The department shall prepare and distribute to each sheriff's office and each game warden of this state a standardized accident report form. Any person involved in a collision, accident, or other casualty involving a death, disappearance, personal injury, or property damage in excess of $100 shall immediately report such collision, accident, or other casualty to the sheriff's office or game warden of the county in which the collision, accident, or casualty occurred and fill out a standardized accident report form.

(3) A sheriff advised of a collision, accident, or other casualty reported under this part shall:

(a) conduct an appropriate investigation of such collision, accident, or other casualty; and

(b) prepare and submit a report of the results of the investigation, together with the completed standardized accident report forms, to the department.

History: **En. Sec. 12, Ch. 285, L. 1959; amd. Sec. 11, Ch. 514, L. 1973; amd. Sec. 12, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3512.**

23-2-528. Transmittal of information to U.S. officials. In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the department pursuant to subsections (2) and (3) of 23-2-527, as amended, shall be transmitted to such official or agency of the United States.

History: **En. Sec. 13, Ch. 285, L. 1959; amd. Sec. 13, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3513.**

23-2-529. Water skis and surfboards. (1) No person may operate a motorboat or vessel on any waters of this state for the purpose of towing a person or persons on water skis, a surfboard, or similar device unless the operator is at least 12 years of age and there is a second person, at least 12 years of age, in the vessel to observe the person being towed.

(2) No person may engage in waterskiing, surfboarding, or similar activity or towing some other contrivances at any time between the hours from 1 hour after sunset to 1 hour before sunrise, except that this subsection does not apply to a performer engaged in a professional exhibition or a person engaged in a regatta or race authorized under this part.

(3) All right-of-way rules applying to a towing vessel apply to a person being towed.

History: **En. Sec. 14, Ch. 285, L. 1959; amd. Sec. 12, Ch. 514, L. 1973; amd. Sec. 14, Ch. 124, L. 1977; R.C.M. 1947, 69-3514; amd. Sec. 5, Ch. 136, L. 1979.**

Cross-References

Passing rule and right-of-way, 23-2-524.

23-2-530. Education program. The department shall coordinate a statewide boat safety education program.

History: **En. Sec. 13, Ch. 514, L. 1973; amd. Sec. 16, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3516.1.**

23-2-531 through 23-2-534 reserved.

23-2-535. Blood alcohol concentration standards — evidence admissible — administration of tests. (1) The presumptions contained in 61-8-401(3) apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of the amount of alcohol in a person's blood at the time of the act alleged and any other competent evidence bearing on the question of whether the person was under the influence of alcohol at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-405 and the definition of blood alcohol concentration provided in 61-8-407 apply to any testing done to determine the blood alcohol concentration of a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" shall have the meaning provided in 61-8-401(3).

History: En. Sec. 2, Ch. 497, L. 1987.

Part 6

Snowmobiles

23-2-601. Definition of terms. As used in 23-2-601 through 23-2-644, the following terms shall have the meanings indicated herein, unless the context otherwise clearly requires that another meaning is intended:

(1) "Certificate of ownership" means the document issued by the department of justice as prima facie evidence of ownership.

(2) "Certificate of registration" means the owner's receipt evidencing payment of taxes, decal fees, and registration fees for a given registration year.

(3) "dbA" means sound pressure level measured on the "A" weight scale in decibels.

(4) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(5) "New snowmobile" means any snowmobile that has not been previously sold to an owner, as defined in subsection (7).

(6) "Operator" includes every person who operates or is in actual physical control of the operation of a snowmobile.

(7) "Owner" includes every person as defined herein, other than a lien holder or other person having a security interest only, holding a certificate of ownership to a snowmobile and entitled to the use or possession thereof.

(8) "Person" includes an individual, partnership, association, corporation, and any other body or group of persons, whether incorporated or not and regardless of the degree of formal organization.

(9) "Roadway" includes only those portions of any highway, road, or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

(10) "Snowmobile" includes any self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, designed primarily for travel on snow or ice, which may be steered by skis or runners and which is not otherwise registered or licensed under the laws of the state of Montana.

History: En. Sec. 1, Ch. 434, L. 1971; amd. Sec. 1, Ch. 91, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 421, L. 1977; R.C.M. 1947, 53-1012; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 363, L. 1979.

23-2-602. Report of stolen and recovered snowmobiles. The sheriff of every county of the state and the chief of police or commissioner of police of every city shall make an immediate report to the department of justice of all snowmobiles reported to him as stolen or recovered, upon forms provided by the department of justice. Upon receipt of such information, the department of justice shall file the same in an index to be known as the "stolen and recovered snowmobile index". The department of justice shall file reports of stolen and recovered snowmobiles reported to it from other states. Once a month the department of justice shall prepare a list of all snowmobiles stolen or recovered during the previous month and forward a copy of the same to every sheriff and all police departments in cities of the first, second, and third class. Such list shall also be forwarded to the secretary of state or other proper official in each state of the United States. Before a certificate of ownership may be issued under 23-2-601 through 23-2-644, the motor and serial number on the snowmobile for which such certificate is to be issued shall be checked against the stolen and recovered snowmobile index.

History: En. Sec. 6, Ch. 434, L. 1971; amd. Sec. 2, Ch. 124, L. 1977; amd. Sec. 11, Ch. 421, L. 1977; R.C.M. 1947, 53-1017.

23-2-603 through 23-2-610 reserved.

23-2-611. Certificate of ownership. (1) No snowmobile may be operated upon any public lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets, or highways, unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state.

(2) The owner of a snowmobile shall apply for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose. The forms must require the following information:

(a) name of the owner;
(b) residence of the owner by town and county;
(c) business or home mail address of the owner;
(d) name and address of any lien holder;
(e) amount due under any contract or lien;
(f) name of the manufacturer;
(g) model number or name;
(h) identification number; and
(i) name and address of the dealer or other person from whom acquired.

(3) The application must be signed by at least one owner or by a properly authorized officer or representative of the owner.

(4) If a certificate of ownership has previously been issued under the provisions of 23-2-601 through 23-2-644, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of 23-2-601 through 23-2-644 were not in force and effect.

(5) Upon completion of the application on forms furnished by the department of justice, the county treasurer shall issue to the applicant two copies of the application, one of which shall be marked "file copy". The treasurer shall forward one copy and the original application to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office, and shall furnish the applicant a certificate of ownership which shall contain that information in the application considered necessary by the department of justice and a permanent ownership number. The certificate of ownership is not to be renewed annually and is valid as long as the person holding it owns the snowmobile.

(6) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(7) Upon application for a certificate of ownership, a fee of $3 shall be paid to the county treasurer, $2 of which shall be forwarded by the county treasurer to the department of justice and deposited in the motor vehicle recording account of the state special revenue fund.

History: En. Sec. 2, Ch. 434, L. 1971; amd. Sec. 18, Ch. 391, L. 1973; amd. Sec. 1, Ch. 249, L. 1974; amd. Sec. 2, Ch. 421, L. 1977; R.C.M. 1947, 53-1013; amd. Sec. 2, Ch. 363, L. 1979; amd. Sec. 24, Ch. 712, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Use of snowmobiles on streams, 23-2-302.

Water pollution control, Title 75, ch. 5.

23-2-612. Transfer of interest. (1) Except as provided in subsection (3), upon a transfer of any certificate of ownership to a snowmobile registered as required under the provisions of 23-2-601 through 23-2-644, the person whose title or interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for the snowmobile in the appropriate space provided upon the reverse side of the certificate, and such signature shall be acknowledged before a notary public.

(2) Within 20 calendar days thereafter, the transferee shall make application for transfer of the certificate of ownership so endorsed with the county treasurer of the county in which the transferee resides and also make application for registration of the snowmobile. The county treasurer shall forward the application to the department of justice, which shall file the same upon receipt thereof. No certificate of ownership may be issued by the department of justice until the outstanding certificates are surrendered to that office or their loss established to its reasonable satisfaction. The county treasurer shall collect a fee of $3 for each application for transfer of ownership, of which $2 shall be forwarded to the department of justice for deposit in the motor vehicle recording account of the state special revenue fund.

(3) A purchaser of a new or used snowmobile from a licensed snowmobile dealer has a grace period of 20 calendar days from the date of purchase to register the snowmobile, make application for a certificate of ownership, and

obtain a decal indicating that the fee in lieu of property tax has been paid on the snowmobile for the current year. It is not a violation of 23-2-601 through 23-2-644 or any other law for the purchaser to operate a newly acquired snowmobile without a certificate of ownership, certificate of registration, and a decal during the 20-day period. During this period the sticker, provided for in subsection (4), shall remain affixed to the snowmobile.

(4) Prior to the delivery of the snowmobile to the purchaser, the dealer shall issue and affix to the snowmobile a sticker (in a form to be prescribed by the department of justice). The sticker shall contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the snowmobile, including its serial number. The dealer shall keep a copy of the sticker for his records and shall send a copy of the sticker to the department of justice.

(5) The provisions of subsection (2) of this section do not apply in the event of the transfer of a snowmobile to a duly licensed snowmobile dealer intending to resell the snowmobile and who operates it only for demonstration purposes, but every such dealer, upon transferring such interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of 23-2-601 through 23-2-644. The department of justice, upon receipt of the certificate of ownership and application for a new certificate, containing notice of a security interest, if any, shall issue a new certificate of ownership together with a statement of any conditional sales contract, mortgage, or other lien.

History: (1), (2), (5)En. Sec. 3, Ch. 434, L. 1971; amd. Sec. 1, Ch. 124, L. 1977; amd. Sec. 2, Ch. 402, L. 1977; amd. Sec. 3, Ch. 421, L. 1977; Sec. 53-1014, R.C.M. 1947; (3), (4)En. 53-1013.1 by Sec. 1, Ch. 402, L. 1977; Sec. 53-1013.1, R.C.M 1947; R.C.M. 1947, 53-1013.1, 53-1014; amd. Sec. 3, Ch. 363, L. 1979; amd. Sec. 25, Ch. 712, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 341, L. 1985.

23-2-613. Lost or mutilated certificates. If any certificate of ownership is lost, mutilated, or becomes illegible, the person to whom it was issued shall immediately make application for and obtain a duplicate thereof, upon payment of a fee of $2.

History: En. Sec. 4, Ch. 434, L. 1971; amd. Sec. 4, Ch. 421, L. 1977; R.C.M. 1947, 53-1015; amd. Sec. 4, Ch. 363, L. 1979.

23-2-614. Exemptions. (1) The provisions of 23-2-601 through 23-2-644, with respect to registration, tax-paid decals, and certification of ownership, do not apply to snowmobiles owned or used by the United States or another state or any agency or political subdivision thereof, any snowmobile registered in a country other than the United States and to be temporarily used within this state for a period of not more than 30 days, or to any snowmobile registered in another state of the United States but to be temporarily used within this state for not more than 30 days. Snowmobiles owned by the state of Montana or any agency or political subdivision thereof are exempt only from the payment of fees and shall otherwise comply with all the requirements of 23-2-601 through 23-2-644.

(2) The provisions of 23-2-601 through 23-2-644 with respect to registration, tax-paid decals, and certification of ownership do not apply to unregistered snowmobiles owned by nonresidents of the state of Montana who either:

(a) display visual proof that a nonresident temporary-use permit has been purchased; or

(b) use the snowmobile only in races and for not more than 30 days in the state. "Race" means an organized competition on a predetermined course that is run according to accepted rules.

History: **En. Sec. 5, Ch. 434, L. 1971; amd. Sec. 5, Ch. 421, L. 1977; R.C.M. 1947, 53-1016(1), (3); amd. Sec. 8, Ch. 363, L. 1979.**

23-2-615. Nonresident temporary-use permits — use of fees. (1) The requirements pertaining to the nonresident temporary-snowmobile-use permit are as follows:

(a) Application for the issuance of the permit shall be made at locations and upon forms prescribed by the department. The forms shall include but are not limited to:

(i) applicant's name and permanent address;

(ii) make, model, year, and serial number of the snowmobile; and

(iii) affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of $6, a nonresident temporary-snowmobile-use sticker shall be issued. The sticker shall be displayed in a conspicuous manner on the snowmobile.

(2) The temporary permit is valid for a consecutive 30-day period as designated by the permit.

(3) The permit is not proof of ownership, and no certificate of ownership may be issued.

(4) All money collected by payment of fees under this section shall be turned over to the state treasurer and placed in the state special revenue fund to the credit of the department of fish, wildlife, and parks, with one-half to be used in administering this section and one-half to be used in the development, maintenance, and operation of snowmobile facilities.

(5) The failure to display the permit as required by this section or the making of false statements in obtaining the permit is a misdemeanor, punishable by a fine of not less than $25 or more than $100.

History: **En. 53-1016.1 by Sec. 6, Ch. 421, L. 1977; R.C.M. 1947, 53-1016.1; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.**

23-2-615.1. Fee in lieu of tax on snowmobiles. (1) There is a fee in lieu of tax on snowmobiles.

(2) The fee for a snowmobile less than 4 years old is $22. In all other cases the fee is $15.

(3) The age of a snowmobile is determined by subtracting the manufacturer's designated model year from the current calendar year.

(4) The fee need not be paid by a dealer for snowmobiles that constitute inventory of the dealership.

History: **En. Sec. 4, Ch. 712, L. 1979.**

23-2-616. Registration and decals — application and issuance — use of certain fees. (1) No snowmobile may be operated on public lands by any person in Montana unless it has been registered and there is displayed in a conspicuous place on both sides of the cowl a decal as visual proof that the fee in lieu of property tax has been paid on it for the current year and the immediately previous year as required by 15-16-202.

(2) Application for registration shall be made to the county treasurer upon forms to be furnished by the department of justice for this purpose, which may be obtained at the county treasurer's office in the county where the owner resides. The application shall contain the following information:

(a) name and address of the owner;
(b) certificate of ownership number;
(c) make of the snowmobile;
(d) model name of the snowmobile;
(e) year of manufacture;
(f) a statement evidencing payment of the fee in lieu of property tax as required by 15-16-202; and
(g) such other information as the department of justice may require.

(3) The application shall be accompanied by a decal fee of $2, a registration fee of 50 cents, and, if the snowmobile has previously been registered, by the registration certificate for the most recent year in which the snowmobile was registered. The treasurer shall sign the application and issue a registration receipt which shall contain information considered necessary by the department of justice and a listing of fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(4) The county treasurer shall forward the signed application to the department of justice and shall issue to the applicant a decal in the style and design prescribed by the department of justice and of a different color than the preceding year, numbered in sequence.

(5) The county treasurer may not accept any application under this section until the applicant has paid the decal and registration fees and the fee in lieu of property tax on the snowmobile for the current year and the immediately previous year as required by 15-16-202.

(6) All money collected from payment of the decal fees and all interest accruing from use of this money shall be forwarded to the state treasurer and placed in the state special revenue fund to the credit of the department, with $1 designated for use in enforcing the purposes of 23-2-601 through 23-2-644 and $1 designated for use in the development, maintenance, and operation of snowmobile facilities. All money collected from payment of the registration fee shall be forwarded to the state treasurer and deposited in the motor vehicle recording account of the state special revenue fund.

(7) The county treasurer shall credit all fees in lieu of tax collected on snowmobiles to the county motor vehicle suspense fund provided for in 61-3-509.

History: (1) thru (6)En. Sec. 2, Ch. 435, L. 1971; amd. Sec. 19, Ch. 391, L. 1973; amd. Sec. 1, Ch. 494, L. 1973; amd. Sec. 2, Ch. 249, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 17, Ch. 421, L. 1977; amd. Sec. 44, Ch. 566, L. 1977; R.C.M. 1947, 53-1025; amd. Sec. 5, Ch. 363, L. 1979; amd. Sec. 26, Ch. 712, L. 1979; (7)En. Sec. 17, Ch. 712, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 421, L. 1987.

Compiler's Comments

1987 Amendment: In (1) and (5), at end, inserted "and the immediately previous year as required by 15-16-202"; and in (2)(f), at end, inserted "as required by 15-16-202".

23-2-617. Duplicate decal. In the event any decal indicating that the fee in lieu of property tax has been paid on a snowmobile for the current year is lost, mutilated, or becomes illegible, the person to whom the same was issued shall immediately make application for and may obtain a duplicate thereof, upon payment of a fee of $1 to the county treasurer.

History: En. Sec. 2, Ch. 494, L. 1973; amd. Sec. 18, Ch. 421, L. 1977; R.C.M. 1947, 53-1025.1; amd. Sec. 27, Ch. 712, L. 1979.

23-2-618. Application for registration and decals to be made annually — grace periods. Application must be made annually to the county treasurer for registration and the issuance of a decal indicating that the fee in lieu of property tax has been paid for the current year. All registrations and decals expire on June 30 of each year.

History: En. Sec. 3, Ch. 435, L. 1971; amd. Sec. 3, Ch. 249, L. 1974; amd. Sec. 1, Ch. 327, L. 1975; amd. Sec. 4, Ch. 124, L. 1977; amd. Sec. 3, Ch. 402, L. 1977; R.C.M. 1947, 53-1026; amd. Sec. 6, Ch. 363, L. 1979; amd. Sec. 28, Ch. 712, L. 1979.

23-2-619. Dealer registration certificate — use of fees. (1) A dealer registration certificate shall be issued in accordance with 23-2-601 through 23-2-644.

(2) The dealer application shall be accompanied by an application fee of $5 and a registration fee of $5. Upon receipt of the dealer application and payment of fees, the dealer shall be issued two dealer snowmobile identification cards which shall be carried by the dealer or the dealer's customer when demonstrating the dealer's snowmobiles.

(3) No bond is required of the dealer.

(4) The dealer shall have a principal place of business where he shall maintain all his business records and display and sell merchandise.

(5) An applicant for renewal of a snowmobile dealer registration shall certify that he has sold 3 or more snowmobiles during the preceding year or pay an additional $50 renewal registration fee or provide a copy of a written new snowmobile franchise or sales agreement that the applicant has with a manufacturer, importer, or distributor.

(6) Additional dealer snowmobile identification cards as required by need justified to the department of justice may be purchased by the dealer for a fee of $2.

(7) Dealer registration certificates and identification cards expire on June 30 following the date of issuance.

(8) (a) The dealer application fees and all interest accruing from use of this money shall be deposited in the state special revenue fund to the credit of the department, with one-half designated for use in enforcing the purposes of 23-2-601 through 23-2-644 and one-half designated for use in the development, maintenance, and operation of snowmobile facilities.

(b) All money collected from dealer registration and renewal registration fees shall be deposited in the motor vehicle recording account of the state special revenue fund.

History: En. Sec. 3, Ch. 494, L. 1973; amd. Sec. 21, Ch. 421, L. 1977; R.C.M. 1947, 53-1029; amd. Sec. 7, Ch. 363, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

23-2-620 through 23-2-630 reserved.

23-2-631. Operation on public roads and streets. (1) No person shall operate a snowmobile upon a controlled access highway or facility at any time. Snowmobile operation may be permitted on the roadway or shoulder of any public road or highway, state highway, county road, or city street located within the boundaries of any municipality only in the event that the street, road, or highway is drifted or covered by snow to such an extent that travel thereon by other motor vehicles is impractical or impossible; the operator has received permission or is otherwise authorized for such travel by the municipality in the case of town or city streets, the board of county commissioners for county roads, or the state highway patrol for all other highways; or such operation has been specifically so authorized on municipal streets by a municipal ordinance.

(2) A snowmobile may make a direct crossing of a street or highway whenever such crossing is necessary to get to another authorized area of operation. Such crossing shall be made at an angle of approximately 90 degrees to the direction of traffic at a place where no obstruction prevents a quick and safe crossing. The snowmobile shall make a complete stop before entering upon any part of the traffic way, and the operator shall yield the right-of-way to all oncoming traffic.

(3) No snowmobile may be operated upon a public street or highway when permitted to do so by 23-2-601 through 23-2-644 unless equipped with at least one headlamp and one taillamp, which shall be lighted at all times during such operation, and unless equipped with a suitable braking device which may be operated by either hand or foot.

(4) The operator of a snowmobile who operates his vehicle upon a public roadway, street, or highway when allowed to do so under the provisions of 23-2-601 through 23-2-644 shall have in his possession a license to drive a motor vehicle as required by the laws of the state of Montana. An operator who crosses a street, road, or highway or who operates a snowmobile upon a street, road, or highway that is drifted or covered with snow to such an extent that travel thereon by other motor vehicles is impractical or impossible or who operates a snowmobile in any other areas of the state where operation is lawfully permitted is not required to apply for or possess a driver's license under the laws of the state of Montana.

History: En. Sec. 7, Ch. 434, L. 1971; amd. Sec. 12, Ch. 421, L. 1977; R.C.M. 1947, 53-1018.

Cross-References

Drivers' licenses, Title 61, ch. 5.

23-2-632. Unlawful operation on streets and highways. (1) It is unlawful for a person to operate a snowmobile on a public street or highway:

(a) at a rate of speed greater than provided by law for motor vehicles;

(b) while under the influence of intoxicating liquor or narcotics or habit-forming drugs;

(c) in a careless or reckless manner so as to endanger the person or property of another or to cause injury or damage to either; or

(d) if that person by reason of age or mental or physical disability is incapable of operating the snowmobile safely under the prevailing circumstances.

(2) It is unlawful to permit the operation of a snowmobile on a public street or highway by a person who by reason of age or physical or mental disability is incapable of operating the snowmobile safely under the prevailing circumstances.

History: En. Sec. 8, Ch. 434, L. 1971; amd. Sec. 3, Ch. 124, L. 1977; amd. Sec. 13, Ch. 421, L. 1977; R.C.M. 1947, 53-1019; amd. Sec. 6, Ch. 136, L. 1979.

Cross-References

Careless and reckless driving — speed limits, 61-8-301 through 61-8-303, 61-8-306, 61-8-311, 61-8-313.

Driving under the influence, Title 61, ch. 8, part 4.

23-2-633. Other unlawful operation. No person while operating a snowmobile may use the same:

(1) for the purpose of driving, rallying, or harassing any of the game animals, game birds, or fur-bearing animals of the state or any livestock. An owner of livestock is not prohibited from managing or driving his own livestock by the use of snowmobiles and may direct other persons to so manage or drive his livestock; and the department of fish, wildlife, and parks, including its duly authorized employees, is not prohibited from managing or driving game animals, game birds, or fur-bearing animals by the use of snowmobiles.

(2) to discharge a firearm from or upon a snowmobile;

(3) without a lighted headlight and taillight between the hours of dusk and dawn.

History: En. Sec. 9, Ch. 434, L. 1971; amd. Sec. 2, Ch. 124, L. 1973; amd. Sec. 2, Ch. 91, L. 1974; amd. Sec. 1, Ch. 161, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 14, Ch. 421, L. 1977; R.C.M. 1947, 53-1020(1); amd. Sec. 2, Ch. 218, L. 1979.

23-2-634. Regulation of snowmobile noise. (1) Except as provided in this section, every snowmobile shall be equipped at all times with noise-suppression devices, including an exhaust muffler in good working order and in constant operation. No snowmobile may be modified by any person in any manner that will amplify or otherwise increase total noise emissions to a level greater than that emitted by the snowmobile as originally constructed, regardless of date of manufacture.

(2) Every person who owns or operates a snowmobile manufactured after June 30, 1972, but prior to June 30, 1975, shall maintain his machine in such a manner that it will not exceed a sound level limitation of 82 dbA measured at 50 feet.

(3) No new snowmobile manufactured after June 30, 1975, except snowmobiles designated for competition purposes only, may be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than 78 dbA measured at 50 feet. Every person who owns or operates a snowmobile manufactured after June 30, 1975, shall maintain his machine in such a manner that it will not exceed a sound level limitation of 78 dbA measured at 50 feet.

(4) A manufacturer who certifies that a new snowmobile can comply with the noise limitation requirements of 23-2-601 through 23-2-644 shall affix a permanent notice of that certification to every snowmobile offered for sale in the state of Montana.

(5) In certifying that a new snowmobile can comply with the noise limitation requirements of 23-2-601 through 23-2-644, a manufacturer shall make such a certification based upon measurements made in accordance with SAE recommended practice J192, as amended. The department, in enforcing the provisions of this section, shall make measurements of snowmobile noise in accordance with applicable practices outlined in the "Procedure for Sound Level Measurements of Snowmobiles" (January, 1969), as amended, used by the international snowmobile industry association or with such other standards for measurement of sound level as the department may adopt.

(6) This section does not apply to organized races or similar competitive events held on:

(a) private lands, with the permission of the owner, lessee, or custodian of the land; or

(b) public lands, with the consent of the public agency having the authority to grant such consent, provided that total sound produced by such an event may not exceed 50 dbA at any point 50 feet or more outside the area under the control of the sponsoring entity.

History: En. Sec. 9, Ch. 434, L. 1971; amd. Sec. 2, Ch. 124, L. 1973; amd. Sec. 2, Ch. 91, L. 1974; amd. Sec. 1, Ch. 161, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 14, Ch. 421, L. 1977; R.C.M. 1947, 53-1020(part); amd. Sec. 9, Ch. 363, L. 1979.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

23-2-635. Accidents involving snowmobiles. The owner or operator of a snowmobile, which is involved in any accident, collision, or upset upon a public street or highway where personal injury occurs to any person or where property damage exceeds $100, shall report the accident or occurrence to a state or local law enforcement agency responsible for collecting reports of accidents involving motor vehicles.

History: En. Sec. 10, Ch. 434, L. 1971; R.C.M. 1947, 53-1021.

23-2-636 through 23-2-640 reserved.

23-2-641. Enforcement. (1) The following persons may enforce the provisions of 23-2-601 through 23-2-644: the enforcement officers employed by the department, with respect to violations relating to wildlife or birds, discharging firearms, or sound level limitations. However, with respect to the sale of any new snowmobile which is subject to the provisions of 23-2-601 through 23-2-644, the attorney general of the state of Montana shall, upon the request of the department, sue for the recovery of the penalties provided in 23-2-642 and bring an action for a restraining order or temporary or permanent injunction against a person who sells or offers to sell a new snowmobile that does not satisfy the sound level limitations imposed by 23-2-601 through 23-2-644.

(2) The department's enforcement personnel, the sheriffs and their deputies of the various counties of the state, the Montana highway patrol, and the police of each municipality shall enforce the provisions of 23-2-601 through 23-2-644.

History: Ap. p. Sec. 11, Ch. 434, L. 1971; amd. Sec. 3, Ch. 91, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 15, Ch. 421, L. 1977; Sec. 53-1022, R.C.M. 1947; Ap. p. Sec. 5, Ch. 435, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 20, Ch. 421, L. 1977; Sec. 53-1028, R.C.M. 1947; R.C.M. 1947, 53-1022, 53-1028.

23-2-642. Penalties. (1) The failure to display a current decal indicating that the fee in lieu of property tax has been paid on the snowmobile for the current year during the time provided in 23-2-601 through 23-2-644 is a misdemeanor, punishable by a fine of not less than $10 or more than $50.

(2) A person who violates any other provision of 23-2-601 through 23-2-644 or a rule adopted pursuant thereto shall pay a civil penalty of not less than $15 or more than $500 for each separate violation.

(3) A person who willfully violates any other provision of 23-2-601 through 23-2-644 or a rule adopted pursuant thereto shall pay a civil penalty of not less than $50 or more than $1,000 for each separate violation.

(4) A manufacturer who certifies that a new snowmobile can meet the sound level limitations imposed by 23-2-601 through 23-2-644 shall be subject to the penalty provisions of subsections (2) and (3) if any machine so certified does not meet the appropriate sound level limitation. For the purposes of this section, every sale of a new snowmobile that does not meet the sound level limitations imposed by 23-2-601 through 23-2-644 constitutes a separate violation.

History: (1)En. Sec. 4, Ch. 435, L. 1971; amd. Sec. 19, Ch. 421, L. 1977; Sec. 53-1027, R.C.M. 1947; (2) thru (4)En. Sec. 12, Ch. 434, L. 1971; amd. Sec. 4, Ch. 91, L. 1974; amd. Sec. 16, Ch. 421, L. 1977; Sec. 53-1023, R.C.M. 1947; R.C.M. 1947, 53-1023, 53-1027(1); amd. Sec. 29, Ch. 712, L. 1979.

Cross-References

Fish and Wildlife Crimestoppers Act, Title 87, ch. 5, part 6.

23-2-643. Regulation by local government precluded. No political subdivision of this state may prescribe further licensing or registration of snowmobiles, and no political subdivision may levy fees or charges for use or operation of snowmobiles within the subdivision.

History: En. Sec. 5, Ch. 434, L. 1971; amd. Sec. 5, Ch. 421, L. 1977; R.C.M. 1947, 53-1016(2).

23-2-644. Use of funds from fines and forfeitures. All fines and forfeitures collected under 23-2-601 through 23-2-644 relating to snowmobiles, except those collected by a justice's court, shall be transmitted to the state treasurer, who shall deposit such fines and forfeitures in the state special revenue fund to the credit of the department to be used only for snowmobile safety and education.

History: En. Sec. 4, Ch. 435, L. 1971; amd. Sec. 19, Ch. 421, L. 1977; R.C.M. 1947, 53-1027(2); amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 18, Ch. 557, L. 1987.

Compiler's Comments

1987 Amendment: Near beginning, after "snowmobiles", inserted "except those collected by a justice's court".

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

23-2-645 through 23-2-650 reserved.

23-2-651. Purpose. The legislature recognizes that there are inherent risks in the sport of snowmobiling that are essentially impossible for a snowmobile area operator to eliminate but that should be known by a reasonable and prudent snowmobiler. The purpose of 23-2-651 through 23-2-656 is to define those areas of responsibility and the acts for which a snowmobile area operator is liable for death or injury to any person or property and those risks for which a snowmobiler expressly assumes or must be considered to have voluntarily assumed the risk of death or injury and for which there can be no recovery.

History: En. Sec. 1, Ch. 440, L. 1987.

23-2-652. Definitions. As used in 23-2-651 through 23-2-656, the following definitions apply:

(1) "Snowmobile" means a vehicle defined in 23-2-601(10).

(2) "Snowmobile area" means those areas designated as snowmobile trails or areas open to the operation of snowmobiles.

(3) "Snowmobile area operators" means those persons responsible for the maintenance of snowmobile trails and open areas or those persons providing rental snowmobile equipment. Operators may include but are not limited to the United States forest service, the Montana department of fish, wildlife, and parks, the Montana snowmobile association, individual snowmobile clubs, landowners or their tenants, persons who offer snowmobile equipment for rent, and private trail grooming contractors.

(4) "Snowmobiler" means any person operating or riding a snowmobile.

History: En. Sec. 2, Ch. 440, L. 1987.

23-2-653. Snowmobile area operators — duties — restriction on liability. (1) The person responsible for the maintenance of or operation of a snowmobile area shall mark all trail maintenance vehicles and furnish the vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are in movement in the snowmobile area.

(2) A snowmobile area operator is liable for death or injury to a snowmobiler or other person or property only for an act or omission that constitutes gross negligence.

(3) Except as provided in this section, a snowmobile area operator has no duty to eliminate, alter, control, or lessen the risk inherent in the sport of snowmobiling. A snowmobile area operator who attempts to eliminate, alter, control, or lessen the risk inherent in the sport of snowmobiling is liable only for an act or omission that constitutes gross negligence.

History: En. Sec. 3, Ch. 440, L. 1987.

23-2-654. Snowmobiler's assumption of responsibility — duties. (1) A snowmobiler assumes the risk and all legal responsibility for death or injury to himself or other persons or property that results from the risks inherent in the sport of snowmobiling. The assumption of risk includes but is not limited to death or injury caused by the following: variations in terrain, surface or subsurface snow or ice conditions, cornices, avalanches, poor visibility, bare spots, rocks, trees, other forms of forest growth or debris, and plainly marked trail maintenance equipment.

(2) A snowmobiler is responsible for:

(a) knowing the range of his own ability to snowmobile any slope, trail, or area and for snowmobiling within the limits of his ability considering the conditions;

(b) maintaining control of his speed and course at all times while snowmobiling;

(c) heeding all posted warnings; and

(d) refraining from acting in a manner that may cause or contribute to the injury of anyone.

(3) The provisions of this section do not affect a products liability cause of action based upon the design or manufacture of snowmobile equipment or products or safety equipment used incidental to the operation of a snowmobile.

History: En. Sec. 4, Ch. 440, L. 1987.

23-2-655. Maintenance of rental snowmobiles. A person who engages in the business of renting snowmobiles to another shall:

(1) maintain rental snowmobiles in a safe condition; and

(2) offer each renter instructions in the mechanical operation of the rental snowmobile.

History: En. Sec. 5, Ch. 440, L. 1987.

23-2-656. Effect of comparative negligence. Notwithstanding any comparative negligence law in this state, a person is barred from recovery from a snowmobile area operator for death or injury to person or property resulting from any risk inherent in the sport of snowmobiling as described in 23-2-654.

History: En. Sec. 6, Ch. 440, L. 1987.

Part 7

Tramways

23-2-701. Policy of state. In order to safeguard the life, health, property, and welfare of the citizens of Montana while using passenger tramways, as defined in 23-2-702, it shall be the policy of the state to protect its citizens and visitors from unnecessary mechanical hazards in the design, construction, and operation of passenger tramways but not from the hazards inherent in the sports of mountaineering, skiing, and hiking or from the hazards of the area utilized by the skier or other sportsman and that periodic inspections be required of passenger tramways with a view to assuring that each one of them meets the rules set forth by the department. The state, through the department, shall register all passenger tramways in the state, establish reasonable standards of design, construction, and operational practices, and cause to be made such inspections as may be necessary in carrying this policy into effect.

History: En. Sec. 1, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; amd. Sec. 19, Ch. 124, L. 1977; R.C.M. 1947, 69-6601.

23-2-702. Definitions. As used in this part, the following definitions apply:

(1) "Area" means the area, terrain, or ski slopes served by a passenger tramway.

(2) "Department" means the department of commerce provided for in 2-15-1801.

(3) "Industry" means the passenger tramway business activities of all those persons in the state who own, manage, or direct the operation of passenger tramways.

(4) "Operator" means a person, including any political subdivision or instrumentality thereof, who owns, manages, or directs the operation of a passenger tramway.

(5) "Passenger tramway" means a device used to transport passengers by means of any of the following:

(a) two-car aerial passenger tramway, a device used to transport passengers in two open or enclosed cars attached to and suspended from a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar devices;

(b) multicar aerial passenger tramway, a device used to transport passengers in several open or enclosed cars or carrying device attached to and suspended from a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar devices;

(c) skimobile, a device in which a passenger car running on steel or wooden tracks is attached to and pulled by a steel cable or similar devices;

(d) chair lift, a type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain, or link belt supported by trestles or towers with one or more spans or similar devices;

(e) a J-bar, T-bar, or platterpull, so-called, and similar types of devices or means of transportation which pull skiers riding on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans;

(f) rope tow, a type of transportation which pulls the skier, riding on skis as the skier grasps the rope or wire rope manually, or similar devices.

History: En. Sec. 2, Ch. 436, L. 1971; amd. Sec. 53, Ch. 511, L. 1973; R.C.M. 1947, 69-6602; amd. Sec. 1, Ch. 90, L. 1987.

Compiler's Comments

1987 Amendment: In (2) substituted "department of commerce" for "department of administration" and changed corresponding code reference.

23-2-703. Tramways not common carriers or public utilities. Passenger tramways shall not be construed to be common carriers or public utilities for the purposes of regulation within the meaning of the laws of the state of Montana.

History: En. Sec. 15, Ch. 436, L. 1971; amd. Sec. 21, Ch. 124, L. 1977; R.C.M. 1947, 69-6615.

23-2-704. Unlawful to endanger life or cause damage. (1) It shall be unlawful for any person riding or using a passenger tramway to do so in such manner as to endanger the life and safety of other persons or cause damage to passenger tramway equipment.

(2) Any person who violates this section shall be guilty of a misdemeanor.

History: En. Secs. 16, 17, Ch. 436, L. 1971; R.C.M. 1947, 69-6616, 69-6617.

Cross-References

Misdemeanor penalty when not otherwise specified, 46-18-212.

23-2-705 through 23-2-710 reserved.

23-2-711. Registration of tramways required. No passenger tramway shall be operated in this state unless it has been and continues to be registered with the department, provided that the initial application for the registration of a passenger tramway shall permit the operator to operate such passenger tramway until final action on the application shall have been taken by the department. If an operator files an application with the department for the registration of a passenger tramway, which at that time is registered, then the operator may continue the operation of such passenger tramway under the existing registration until the department takes final action on the pending application and shall have:

(1) issued a certificate to the operator; or

(2) given written notice to the operator that the passenger tramway has not qualified for certification.

History: En. Sec. 5, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6605.

23-2-712. Application for registration. Each year on or before October 1, every operator of a passenger tramway shall apply to the department, on forms prepared by it, for registration of the passenger tramways owned, operated, or managed by him. The application shall contain such information as the department may reasonably require in order for it to determine whether the passenger tramways sought to be registered comply with the intent of this part as specified in 23-2-701 and the rules promulgated by the department pursuant to 23-2-721.

History: En. Sec. 6, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6606.

23-2-713. Issuance of certificates. (1) The department shall issue to the applying operator registration certificates for each passenger tramway owned, managed, or operated by such operator when it is satisfied:

(a) that the facts stated in the application are sufficient to enable the department to fulfill its duties under this part; and

(b) that each such passenger tramway sought to be registered complies with the rules of the department promulgated pursuant to 23-2-721.

(2) In order to satisfy itself that the conditions described in subsections (1)(a) and (1)(b) of this section have been fulfilled, the department may cause to be made such inspections described in 23-2-722 as it may reasonably deem necessary.

(3) When an operator installs a passenger tramway subsequent to October 1 of any year, such operator shall file a supplemental application for registration of such passenger tramway. Upon the receipt of such supplemental application, the department shall proceed immediately to initiate proceedings leading to the registration or rejection of registration of such passenger tramway pursuant to the provisions of this part.

(4) Each registration shall expire on September 30 of the year next following the year of issuance.

(5) Each operator shall cause the registration certificate for each passenger tramway registered to be displayed conspicuously at the place where passengers load.

History: En. Sec. 7, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6607.

23-2-714. Fees. (1) The application for registration or supplemental application shall be accompanied by such annual fees as the department may fix from year to year, not to exceed the following annual fees:

(a) passenger tramways described in subsections (5)(e) and (5)(f) of 23-2-702, $25 each;

(b) passenger tramways described in subsections (5)(c) and (5)(d) of 23-2-702, $50 each;

(c) passenger tramways described in subsections (5)(a) and (5)(b) of 23-2-702, $100 each.

(2) All fees collected by the department shall be deposited in the state special revenue fund.

History: (1)En. Sec. 8, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; Sec. 69-6608, R.C.M. 1947; (2)En. Sec. 9, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; amd. Sec. 2, Ch. 437, L. 1977; Sec. 69-6609, R.C.M. 1947; R.C.M. 1947, 69-6608, 69-6609; amd. Sec. 1, Ch. 188, L. 1985.

23-2-715. Assessment on passenger tramway receipts. (1) The department is hereby authorized to impose an assessment of ¼ of 1% on the gross receipts of all passenger tramways operated in the state of Montana. A minimum of $100 shall be collected annually from the owner of a passenger tramway facility. The assessment shall be calculated upon gross receipts received during the period July 1 of any year to July 1 of the following year. The assessments shall be collected by the department of revenue and remitted to the state special revenue fund by December 31 of each year.

(2) All proceeds of the gross receipts assessment and the fees collected under 23-2-714 shall be used only to support the duties of the department set forth in this part.

History: En. 69-6608.1 by Sec. 1, Ch. 437, L. 1977; R.C.M. 1947, 69-6608.1; amd. Sec. 2, Ch. 188, L. 1985; amd. Sec. 2, Ch. 90, L. 1987.

Compiler's Comments

1987 Amendment: At beginning of (1), after "department", deleted "of administration".

23-2-716 through 23-2-720 reserved.

23-2-721. Additional powers and duties of department. In addition to all other powers and duties conferred and imposed upon the department by this part, the department shall:

(1) adopt reasonable rules relating to public safety in the design, construction, and operation of passenger tramways but which may not relate or pertain to an area served by a passenger tramway. In adopting such rules the department shall:

(a) use as a guideline the standards contained in "The American National Standards Institute—Safety Requirements for Aerial Passenger Tramways", ANSI B 77.1—1970, as amended from time to time or equivalent and as amended or supplemented from time to time by the department;

(b) hold hearings and take in all evidence relating to the adoption of these rules;

(2) supply to each operator a copy of its rules and each amendment thereto or revision thereof;

(3) avoid discrimination in application of the rules to operators of passenger tramways;

(4) hold hearings and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the department, subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers, and records relevant to any inquiry;

(5) approve, deny, revoke, and renew the registrations provided for in this part;

(6) cause the prosecution and enjoinder of all persons violating the provisions of this part and incur the necessary expenses thereof;

(7) employ, within the funds available, and prescribe the duties of such personnel as the department considers necessary.

History: En. Sec. 10, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; amd. Sec. 20, Ch. 124, L. 1977; R.C.M. 1947, 69-6610.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

23-2-722. Inspection of tramways. The department may cause to be made such inspection of the design, construction, operation, and maintenance of passenger tramways as the department may reasonably require. The department may employ qualified engineers to make such inspections for reasonable fees plus expenses. If, as the result of an inspection, it is found that a violation of the department's rules exists or a condition in passenger tramway construction, operation, or maintenance exists endangering the safety of the public, an immediate report shall be made to the operator whose passenger tramway has received such inspection and to the department for appropriate investigation and order.

History: **En. Sec. 11, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6611.**

Cross-References

Licensing of engineers, Title 37, ch. 67.

23-2-723. Order for corrective action and compliance. If, after investigation, the department finds that a violation of this part or any of its rules exists or that there is a condition in passenger tramway construction, operation, or maintenance endangering the safety of the public, it shall forthwith issue its written order setting forth its findings, the corrective action to be taken, and fixing a reasonable time for compliance therewith. Such order shall be served upon the operator involved in such violation personally or by registered or certified mail at the department's election, and return shall be made as provided in the Montana Rules of Civil Procedure.

History: **En. Sec. 12, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6612.**

Cross-References

Proof of service of process, Rules 4D(8) and 5(f), M.R.Civ.P. (see Title 25, ch. 20).

23-2-724. Remedies to enforce compliance. If any operator fails to comply with a legal order or rule of the department, the department, at its election, may:

(1) suspend the registration of the affected passenger tramway until the operator complies therewith; or

(2) bring injunctive proceedings in the district court of the judicial district in which the affected passenger tramway is located to compel compliance therewith. In such proceedings the department shall not be required to post bond.

History: **En. Sec. 13, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6613.**

Cross-References

Injunctions, Title 27, ch. 19.

23-2-725. Judicial review. Any order of the department adverse to an operator may be appealed by the operator to the district court of the district wherein is located his passenger tramway which is the subject of such order, and said district court shall conduct a proceeding, de novo, and the decision of the district court shall be subject to appeal to the supreme court of Montana, as in civil cases.

History: **En. Sec. 14, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6614.**

Cross-References

Judicial review of contested cases of administrative agency action, Title 2, ch. 4, part 7.

23-2-726 through 23-2-730 reserved.

23-2-731. Purpose. It is recognized that there are inherent risks in the sport of skiing that are essentially impossible to eliminate by the ski area operator but that should be known by the skier. It is the purpose of 23-2-731 through 23-2-737 to define those areas of responsibility and affirmative acts for which the ski area operator is liable for loss, damage, or injury and those risks for which the skier expressly assumes or shall be considered to have voluntarily assumed the risk of loss or damage and for which there can be no recovery.

History: En. Sec. 1, Ch. 509, L. 1979.

Cross-References

Liability for negligence and intentional torts, Title 27, ch. 1, part 7.

23-2-732. Definitions. As used in 23-2-731 through 23-2-737, the following definitions apply:

(1) "Skier" means any person admitted to a ski area under the control of a ski area operator for the purpose of engaging in the sport of skiing by using the ski slopes, trails, and areas and does not include a person using an aerial passenger tramway.

(2) "Ski slopes, trails, and areas" means those areas designated by the ski area operator to be used by skiers for the purpose of participating in the sport of skiing.

History: En. Sec. 2, Ch. 509, L. 1979.

23-2-733. Duties of operator regarding ski areas. A ski area operator shall:

(1) mark all trail maintenance vehicles and furnish the vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are in movement in the ski area;

(2) mark with a visible sign or other warning implement the location of any hydrant or similar equipment used in snowmaking operations and located on ski slopes, trails, and areas;

(3) maintain one or more trail boards at prominent locations at each ski area displaying that area's network of ski trails and slopes;

(4) post a notice of the requirement for the use of ski-retention devices;

(5) designate by trail board or otherwise which trails or slopes are open or closed.

History: En. Sec. 3, Ch. 509, L. 1979.

23-2-734. Duties of operator with respect to passenger tramways. A ski area operator shall construct, operate, maintain, and repair any passenger tramway in accordance with the rules of the department. However, nothing in this section relieves an operator from the duty of taking whatever other actions are necessary to properly construct, operate, maintain, and repair a passenger tramway.

History: En. Sec. 4, Ch. 509, L. 1979; amd. Sec. 3, Ch. 90, L. 1987.

Compiler's Comments

1987 Amendment: At end of first sentence, after "department", deleted "of administration".

23-2-735. Duties of passenger. No passenger may:

(1) board or disembark from a passenger tramway except at an area designated for such purposes;

(2) throw or expel any object from a passenger tramway;

(3) commit an act that interferes with the running or operation of a passenger tramway;

(4) use a passenger tramway unless the passenger has the ability to use it safely without any instruction on its use by the operator or requests and receives instruction before boarding;

(5) embark on a passenger tramway without the authority of the operator.

History: En. Sec. 5, Ch. 509, L. 1979.

23-2-736. Skier's assumption of responsibility — duties. (1) A skier assumes the risk and all legal responsibility for injury to himself or loss of property that results from participating in the sport of skiing by virtue of his participation. The assumption of risk and responsibility includes but is not limited to injury or loss caused by the following: variations in terrain, surface or subsurface snow or ice conditions, bare spots, rocks, trees, other forms of forest growth or debris, lift towers and components thereof, pole lines, and plainly marked or visible snowmaking equipment.

(2) A skier is responsible for knowing the range of his own ability to ski any slope, trail, or area and for skiing within the limits of his ability, skiing only on designated slopes and trails, maintaining control of speed and course at all times while skiing, heeding all posted warnings, and refraining from acting in a manner that may cause or contribute to the injury of anyone. The responsibility for collisions with a person or object while skiing is the responsibility of the person or persons and not the responsibility of the ski area operator.

(3) A person who is skiing may not place an object in the ski area or on the uphill track of a passenger tramway that may cause a passenger or skier to fall, cross the track of a passenger tramway except at a designated and approved area, or if involved in a skiing accident, depart from the scene of the accident without leaving personal identification before notifying the proper authorities or obtaining assistance when the skier knows that a person involved in the accident is in need of medical or other assistance.

History: En. Sec. 6, Ch. 509, L. 1979.

Cross-References

Pleading assumption of risk, Rule 8(c), M.R.Civ.P. (see Title 25, ch. 20).

Comparative negligence, 27-1-702.

23-2-737. Effect of comparative negligence. Notwithstanding any comparative negligence law in this state, a person is barred from recovery from a ski area operator for loss or damage resulting from any risk inherent in the sport of skiing as described in 23-2-736.

History: En. Sec. 7, Ch. 509, L. 1979.

Cross-References

Comparative negligence — extent to which contributory negligence bars recovery, 27-1-702.

Part 8

Off-Highway Vehicles

23-2-801. *(Effective January 1, 1988)* **Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) (a) "Off-highway vehicle" means a self-propelled vehicle used for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) Off-highway vehicle does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) vehicles otherwise licensed under the laws of the state.

(2) "Department" means the department of fish, wildlife, and parks.

History: En. Sec. 1, Ch. 578, L. 1987.

23-2-802. *(Effective January 1, 1988)* **Exemptions.** The provisions of this part do not apply to an off-highway vehicle:

(1) owned or used by the United States or another state or an agency or political subdivision thereof;

(2) registered in a country other than the United States, temporarily used within this state for not more than 30 days; or

(3) registered in another state of the United States, temporarily used within this state for not more than 30 days.

History: En. Sec. 2, Ch. 578, L. 1987.

23-2-803. *(Effective January 1, 1988)* **Fee in lieu of tax on off-highway vehicles — disposition of fees.** (1) There is a fee in lieu of tax on off-highway vehicles to be paid to the county treasurer of the county in which the owner of the off-highway vehicle resides.

(a) The fee for an off-highway vehicle less than 3 years old is $25. In all other cases the fee is $15.

(b) The age of an off-highway vehicle is determined by subtracting the manufacturer's designated model year from the current calendar year.

(2) The county treasurer shall distribute all fees in lieu of tax collected on off-highway vehicles pursuant to this section in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

History: En. Sec. 3, Ch. 578, L. 1987.

23-2-804. *(Effective January 1, 1988)* **Decal required.** Except as provided in 23-2-802, no off-highway vehicle may be operated by any person in Montana unless there is displayed in a conspicuous place a decal, in a form prescribed by the department, as visual proof that the fee in lieu of tax provided for in 23-2-803 has been paid for the current year. The decal will be serially numbered and have the expiration date of December 31 of the appropriate year printed thereon.

History: En. Sec. 4, Ch. 578, L. 1987.

23-2-805. *(Effective January 1, 1988)* **Identification of off-highway vehicle to which fee applies.** (1) When the owner of an off-highway vehicle pays the fee in lieu of tax provided for in 23-2-803, he shall furnish to the county treasurer, upon a form furnished by the department for this purpose, the following information about the off-highway vehicle:

(a) name of the owner;
(b) residence or mailing address of the owner, by town and county;
(c) name of the manufacturer;
(d) model number or name; and
(e) identification number.

(2) The application must be signed by at least one owner or by a properly authorized agent of the owner.

(3) Upon payment of the fee in lieu of tax and completion of the identification form, the county treasurer shall deliver the decal provided for in 23-2-804.

History: **En. Sec. 5, Ch. 578, L. 1987.**

23-2-806. *(Effective January 1, 1988)* **Enforcement.** The department's enforcement personnel, sheriffs and their deputies, the Montana highway patrol, and the police of each municipality shall enforce the provisions of this part.

History: **En. Sec. 6, Ch. 578, L. 1987.**

23-2-807. *(Effective January 1, 1988)* **Penalty — disposition.** (1) The failure to display a current decal indicating that the fee in lieu of tax has been paid on the off-highway vehicle for the current year as provided in 23-2-804 is a misdemeanor punishable by a fine equal to five times the fee in lieu of tax that is due on the off-highway vehicle for the current year.

(2) All fines collected under this section must be transmitted to the state treasurer, who shall deposit the money in the earmarked revenue fund to the credit of the department to be used for off-highway vehicle safety and education.

History: **En. Sec. 7, Ch. 578, L. 1987.**

23-2-808. *(Effective January 1, 1988)* **Regulation by local government precluded.** No political subdivision may prescribe further licensing or registration of off-highway vehicles, and no political subdivision may levy fees or charges for use or operation of off-highway vehicles within the subdivision.

History: **En. Sec. 9, Ch. 578, L. 1987.**

CHAPTER 3

ATHLETICS
BOXING AND WRESTLING

Part 1 — State Board of Athletics
(Repealed. Sec. 1, Ch. 322, L. 1981)

Part 2 — Boxing, Sparring, and Wrestling Matches
(Repealed. Sec. 1, Ch. 322, L. 1981)

Part 3 — General

23-3-301. Definitions.

Part 4 — Board of Athletics

23-3-401. Board organization — compensation — meetings — department to keep records.
23-3-402. Enforcement of rules by board member — board designees.
23-3-403. Board member conflict of interest.
23-3-404. Board jurisdiction — license required — contestant participation.
23-3-405. Rules.

Part 5 — Licenses

23-3-501. Licenses — fees.
23-3-502. Bond — conditions.

Part 6 — Reporting Requirements
Penalties

23-3-601. Report of ticket sales — tax on gross receipts — disposition of money received.
23-3-602. Examination of books and records on failure to make report or on unsatisfactory report — penalty for failure to pay tax.
23-3-603. Discipline.
23-3-604 through 23-3-610 reserved.
23-3-611. Violation as misdemeanor.

Chapter Cross-References

Power of cities — license, tax, and regulate sporting activities, 7-21-4201.

Bribery in sporting contests, 45-8-214.

Part 1

State Board of Athletics
(Repealed. Sec. 1, Ch. 322, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

23-3-101. En. 82-301.1 by Sec. 346, Ch. 350, L. 1974; R.C.M. 1947, 82-301.1.

23-3-102. En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4551, R.C.M. 1921; amd. Sec. 1, Ch. 103, L. 1927; re-en. Sec. 4551, R.C.M. 1935; amd. Sec. 345, Ch. 350, L. 1974; amd. Sec. 19, Ch. 453, L. 1977; R.C.M. 1947, 82-301; amd. Sec. 5, Ch. 474, L. 1981.

23-3-103. En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4552, R.C.M. 1921; amd. Sec. 2, Ch. 103, L. 1927; re-en. Sec. 4552, R.C.M. 1935; amd. Sec. 36, Ch. 93, L. 1969; amd. Sec. 347, Ch. 350, L. 1974; R.C.M. 1947, 82-302.

Part 2

Boxing, Sparring, and Wrestling Matches (Repealed. Sec. 1, Ch. 322, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

23-3-201. En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4554, R.C.M. 1921; amd. Sec. 3, Ch. 103, L. 1927; re-en. Sec. 4554, R.C.M. 1935; amd. Sec. 1, Ch. 171, L. 1953; amd. Sec. 348, Ch. 350, L. 1974; amd. Sec. 1, Ch. 5, L. 1977; R.C.M. 1947, 82-303.

23-3-202. En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4555, R.C.M. 1921; amd. Sec. 4, Ch. 103, L. 1927; re-en. Sec. 4555, R.C.M. 1935; R.C.M. 1947, 82-304.

23-3-203. En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4556, R.C.M. 1921; amd. Sec. 5, Ch. 103, L. 1927; re-en. Sec. 4556, R.C.M. 1935; amd. Sec. 1, Ch. 185, L. 1947; amd. Sec. 349, Ch. 350, L. 1974; R.C.M. 1947, 82-305.

23-3-204. En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4557, R.C.M. 1921; amd. Sec. 6, Ch. 103, L. 1927; re-en. Sec. 4557, R.C.M. 1935; amd. Sec. 350, Ch. 350, L. 1974; R.C.M. 1947, 82-306.

23-3-205. En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4558, R.C.M. 1921; amd. Sec. 7, Ch. 103, L. 1927; re-en. Sec. 4558, R.C.M. 1935; R.C.M. 1947, 82-307.

23-3-206. En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4559, R.C.M. 1921; amd. Sec. 8, Ch. 103, L. 1927; re-en. Sec. 4559, R.C.M. 1935; amd. Sec. 2, Ch. 171, L. 1953; amd. Sec. 162, Ch. 147, L. 1963; amd. Sec. 30, Ch. 271, L. 1963; amd. Sec. 351, Ch. 350, L. 1974; amd. Sec. 1, Ch. 217, L. 1975; R.C.M. 1947, 82-308.

23-3-207. En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4560, R.C.M. 1921; amd. Sec. 9, Ch. 103, L. 1927; re-en. Sec. 4560, R.C.M. 1935; amd. Sec. 3, Ch. 171, L. 1953; amd. Sec. 352, Ch. 350, L. 1974; amd. Sec. 2, Ch. 217, L. 1975; R.C.M. 1947, 82-309.

23-3-208. En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4561, R.C.M. 1921; amd. Sec. 10, Ch. 103, L. 1927; re-en. Sec. 4561, R.C.M. 1935; amd. Sec. 353, Ch. 350, L. 1974; R.C.M. 1947, 82-310.

23-3-209. En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4562, R.C.M. 1921; amd. Sec. 11, Ch. 103, L. 1927; re-en. Sec. 4562, R.C.M. 1935; R.C.M. 1947, 82-311.

Part 3

General

23-3-301. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of athletics provided for in 2-15-1882.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

History: En. Sec. 2, Ch. 506, L. 1983.

Part 4

Board of Athletics

23-3-401. Board organization — compensation — meetings — department to keep records. (1) Before April 1 of each year, the board shall meet to elect one of its number chairman and may elect such officers as it considers necessary. Two of the members of the board constitute a quorum to do business, and, except as provided in 23-3-402, the concurrence of at least two members is necessary to take board action.

(2) The members of the board are entitled to compensation and expenses as provided in 37-1-133.

(3) The department shall keep a record of the board's proceedings, which are public records subject to public inspection.

History: **En. Sec. 3, Ch. 506, L. 1983.**

23-3-402. Enforcement of rules by board member — board designees. (1) In absence of a quorum of the board, any board member in attendance at and supervising a contest or exhibition has the full power of the board in enforcing rules of the board.

(2) The board may designate in writing representatives to act specifically on behalf of the board but only within the scope of the written authority.

History: **En. Sec. 4, Ch. 506, L. 1983.**

23-3-403. Board member conflict of interest. No board member may:

(1) serve as a manager, promoter, or trainer of a professional or semiprofessional boxer or wrestler;

(2) have a financial interest or affiliation in a professional or semiprofessional boxing or wrestling match;

(3) serve as ring official, timer, referee, or judge at a professional or semiprofessional boxing or wrestling match; or

(4) participate in a professional or semiprofessional boxing or wrestling match.

History: **En. Sec. 5, Ch. 506, L. 1983; amd. Sec. 1, Ch. 97, L. 1985.**

23-3-404. Board jurisdiction — license required — contestant participation. (1) The board has sole management, control, and jurisdiction over each professional or semiprofessional wrestling or boxing match or exhibition, including "so you think you are tough" boxing matches and mud wrestling, involving recognition, a prize, or purse and at which an admission fee is charged, either directly or indirectly, in the form of dues or otherwise, to be held within the state, except a match or exhibition conducted:

(a) by a university, college, or high school;

(b) by the military; or

(c) for contestants under 16 years of age, by a recognized amateur association.

(2) No organization or individual may conduct a match or exhibition within the board's jurisdiction unless it or he is the holder of an appropriate license granted by the board.

(3) No referee, manager, or judge may participate in a match or exhibition within the board's jurisdiction unless he is licensed by the board and the match or exhibition is conducted by an organization or individual licensed by the board.

(4) No professional or semiprofessional boxer or wrestler may participate in a match or exhibition within the board's jurisdiction unless he is licensed

by the board and the match or exhibition is conducted by an organization or individual licensed by the board and his right to participate has not been suspended under 23-3-603.

History: En. Sec. 6, Ch. 506, L. 1983; amd. Sec. 2, Ch. 97, L. 1985.

23-3-405. Rules. (1) The board may adopt rules for the administration and enforcement of this chapter.

(2) The rules must include but are not limited to the following:

(a) the granting, renewal, suspension, and revocation of licenses and the qualification requirements for those to be licensed to conduct matches or exhibitions or to be licensed as referees, managers, or judges. Such qualifications must include appropriate knowledge, experience, and integrity.

(b) the labeling of a match as a championship match;

(c) the number and length of rounds and the weight of gloves;

(d) the extent and timing of the physical examination of contestants;

(e) the attendance of a referee and his powers and duties; and

(f) review of decisions made by officials.

(3) The rules shall meet or exceed the safety codes required by recognized professional boxing and wrestling organizations and provide reasonable measures for the fair conduct of the matches or exhibitions and for the protection of the health and safety of the contestants. The rules shall require a physical examination of each contestant prior to each match or exhibition and the attendance of a licensed physician at ringside and shall provide for the qualifications of judges, referees, and seconds and for the payment of such officials by the promoter.

History: En. Sec. 7, Ch. 506, L. 1983; amd. Sec. 3, Ch. 97, L. 1985.

Part 5

Licenses

23-3-501. Licenses — fees. (1) The board may issue an annual license to a professional or semiprofessional boxing or wrestling promoter, whether an individual or organization, for the sole purpose of conducting professional or semiprofessional matches or exhibitions.

(2) The board may issue annual licenses to qualified referees, managers, boxers, wrestlers, seconds, trainers, and judges.

(3) Each application for an original license under this section or renewal of a license must be accompanied by a fee set by the board, commensurate with costs related to the particular license as provided in 37-1-134.

History: En. Sec. 8, Ch. 506, L. 1983.

23-3-502. Bond — conditions. (1) No license to conduct professional or semiprofessional matches or exhibitions may be issued unless the licensee has executed a bond in the sum of not less than $5,000.

(2) The bond must be conditioned on faithful compliance by the licensee with the provisions of this chapter and the rules of the board.

History: En. Sec. 9, Ch. 506, L. 1983.

Part 6

Reporting Requirements Penalties

23-3-601. Report of ticket sales — tax on gross receipts — disposition of money received. (1) An individual or organization licensed to conduct a boxing or wrestling match or exhibition must, within 24 hours after the completion of each match or exhibition, furnish to the department a written report, verified by one of its officers or owners, showing the number of tickets sold for the match or exhibition, the amount of gross proceeds, and other matters as the board prescribes and must also within 24 hours pay to the department a tax of 5% of its total gross receipts, after deducting the federal admission tax, if any, from the sale of tickets.

(2) All taxes and fees collected by the department or the board under this chapter must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: **En. Sec. 10, Ch. 506, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.**

23-3-602. Examination of books and records on failure to make report or on unsatisfactory report — penalty for failure to pay tax. (1) If an individual or organization fails to make a report of a contest at the time prescribed by 23-3-601 or if the report is unsatisfactory to the board, the board may examine the books and records of the individual or organization and subpoena and examine witnesses under oath for the purpose of determining the total amount of its gross receipts for a contest and the amount of tax due under this chapter.

(2) If the individual or organization remains in default in the payment of tax ascertained to be due for a period of 20 days after notice to such delinquent of the amount due, the delinquent forfeits its license and is disqualified from receiving a new license.

History: **En. Sec. 11, Ch. 506, L. 1983.**

23-3-603. Discipline. (1) A license issued under the provisions of this chapter may, after notice and opportunity for hearing, be revoked or suspended by the board for a violation of the provisions of this chapter or any rule of the board.

(2) The board may, after notice and opportunity for hearing, reprimand any professional or semiprofessional athlete or suspend, for a period not to exceed 1 year, his right to participate in any match or exhibition conducted by any licensee for:

(a) unsportsmanlike conduct while engaged in or arising directly from any match or exhibition;

(b) failure to compete in good faith or engaging in any sham match or exhibition; or

(c) the use of threatening or abusive language toward officials or spectators.

History: **En. Sec. 12, Ch. 506, L. 1983.**

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Disciplinary authority of boards, 37-1-136.

23-3-604 through 23-3-610 reserved.

23-3-611. Violation as misdemeanor. A person who violates a provision of this chapter is guilty of a misdemeanor and upon conviction is punishable as provided in 46-18-212.

History: **En. Sec. 13, Ch. 506, L. 1983.**

CHAPTER 4

HORSERACING

Part 1 — Administration

23-4-101. Definitions.
23-4-102. Chairman — quorum — costs — salary.
23-4-103. Department's report — public record.
23-4-104. Duties of board.
23-4-105. Authority of board.
23-4-106. Executive secretary — powers and duties — staff — prohibition on racing activities.

Part 2 — Race Meets

23-4-201. Licenses.
23-4-202. Penalty for violations of law — authority of board — judicial review.
23-4-203. Race meets — when lawful.
23-4-204. Race exclusively for Montana-bred horses — bonus for winner.
23-4-205. Public liability insurance.

Part 3 — Parimutuel Betting

23-4-301. Parimutuel betting — other betting illegal.
23-4-302. Distribution of deposits — breakage.
23-4-303. Licensee's right to withhold deposits.
23-4-304. Gross receipts — department's percentage — collection and allocation.
23-4-305. Deposit of unclaimed money.

Chapter Cross-References

Board of Horseracing created, 2-15-1881.

Local government — no power to regulate gambling, 7-1-112.

Cruelty to animals — horseraces longer than 2 miles, 45-8-211.

Part 1

Administration

23-4-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of horseracing provided for in 2-15-1881.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Immediate family" means the spouse, parents, children, grandchildren, brothers, or sisters of an official or licensee regulated by this chapter and all other persons who have a permanent or continuous residence in the household of the official or licensee.

(4) "Minor" means a person under 18 years of age.

(5) "Persons" means individuals, firms, corporations, fair boards, and associations.

(6) "Race meet" means racing of registered horses where the parimutuel system of wagering is used.

(7) "Steward" means an official hired by the department and by persons sponsoring a race meet to regulate and control the day-to-day conduct and operation of a sanctioned meet.

(8) "Board of stewards" means a board composed of three stewards who supervise racing meets.

History: En. Sec. 2, Ch. 196, L. 1965; amd. Sec. 13, Ch. 350, L. 1974; R.C.M. 1947, 62-502; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 4, Ch. 563, L. 1983.

23-4-102. Chairman — quorum — costs — salary. (1) The board shall organize by electing one of its members chairman. Three members of the board shall constitute a quorum for the transaction of business by the board.

(2) The board may incur costs, charges, and expenses reasonably necessary to carry out this chapter.

(3) Each member may be paid $25 for each day in which he is actually and necessarily engaged in the performance of board duties and shall be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred in his official service.

History: En. Sec. 3, Ch. 196, L. 1965; amd. Sec. 1, Ch. 213, L. 1973; amd. Sec. 2, Ch. 457, L. 1973; amd. Sec. 14, Ch. 350, L. 1974; amd. Sec. 9, Ch. 453, L. 1977; R.C.M. 1947, 62-503.

23-4-103. Department's report — public record. (1) The department shall keep detailed records of board meetings, of the business transacted at the meetings, and licenses applied for and issued.

(2) Records of the board kept by the department are public records subject to public inspection.

History: En. Sec. 4, Ch. 196, L. 1965; amd. Sec. 17, Ch. 93, L. 1969; amd. Sec. 15, Ch. 350, L. 1974; R.C.M. 1947, 62-504.

23-4-104. Duties of board. The board shall adopt rules to govern horserace meets and the parimutuel system. These rules shall include the following:

(1) definitions;

(2) auditing;

(3) supervision of the parimutuel system;

(4) corrupt practices;

(5) supervision, duties, and responsibilities of the executive secretary, presiding steward, racing secretary, and other racing officials;

(6) licensing of all personnel who have anything to do with the substantive operation of racing;

(7) the establishment of dates for race meets and meetings in the best interests of breeding and racing in this state; and

(8) the veterinary practices and standards which must be observed in connection with race meets;

(9) absolute responsibility of trainers for the condition of horses, regardless of the acts of third parties;

(10) licensing or renewal of a license of a person whose license has been suspended by the board or another horseracing jurisdiction; and

(11) setting license fees commensurate with the cost of issuing a license.

History: **En. Sec. 5, Ch. 196, L. 1965; amd. Sec. 1, Ch. 216, L. 1967; amd. Sec. 16, Ch. 350, L. 1974; amd. Sec. 1, Ch. 533, L. 1977; R.C.M. 1947, 62-505(part); amd. Sec. 5, Ch. 563, L. 1983.**

Cross-References

Licensing of veterinarians, Title 37, ch. 18.

23-4-105. Authority of board. The board shall, subject to 37-1-101 and 37-1-121, license and regulate horseracing and review race meets held in this state under this chapter. If the board decides to authorize new forms of racing not currently engaged in in Montana, it shall do so after holding public hearings to determine the effects of these forms of racing on the existing saddle racing program in Montana. The board should consider both economic and safety impacts on the existing racing and breeding industry.

History: **En. Sec. 6, Ch. 196, L. 1965; amd. Sec. 17, Ch. 350, L. 1974; R.C.M. 1947, 62-506; amd. Sec. 6, Ch. 563, L. 1983.**

23-4-106. Executive secretary — powers and duties — staff — prohibition on racing activities. (1) The department shall appoint an executive secretary for the board.

(2) The executive secretary, in accordance with rules adopted by the board and provisions of this chapter, shall:

(a) supervise race meets and activities of racing officials;

(b) hire all state racing officials for the department;

(c) inspect race facilities; and

(d) perform other duties as directed by the board.

(3) The executive secretary may, subject to the approval of the board, hire staff to assist him in performing his duties.

(4) The executive secretary, a member of his staff, and any member of the executive secretary's or a staff member's immediate family are prohibited from owning, training, or having any interest in a racehorse running on a Montana track or having any financial interest in any Montana racing association. No racing official hired by the department or approved by the board may wager at a racing meet at which he presides.

History: **En. Sec. 7, Ch. 563, L. 1983.**

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

Part 2

Race Meets

23-4-201. Licenses. (1) It is unlawful for a person to hold a race meet in this state without a valid license issued by the department under this chapter. A person applying for a license to hold a race meet under this chapter shall file an application with the department which shall set forth the time, place, and number of days the license will continue and other information the board requires.

(2) A person who participates in a race meet shall be licensed and charged an annual fee set by the board, which shall be paid to the department and used for expenses of administering this chapter, subject to 37-1-101(6). Each person holding a license under this chapter shall comply with this chapter and with the rules adopted and orders issued by the board.

(3) No license may be issued to a person who has failed to pay the fees, taxes, or moneys required under this chapter.

(4) Applications to hold race meets shall be submitted to the department, and the board shall act on the applications within 30 days. The board is the sole judge of whether the race meet may be licensed and the number of days the meet may continue.

(5) The board shall require that a fair board and an independent racing association conducting race meets meet the requirements of the rules adopted by the board before granting a license.

(6) An unexpired license held by a person who violates this chapter or who fails to pay to the department the sums required under this chapter is subject to cancellation and revocation by the board.

History: (1), (3) thru (5)En. Sec. 7, Ch. 196, L. 1965; amd. Sec. 2, Ch. 216, L. 1967; amd. Sec. 18, Ch. 350, L. 1974; Sec. 62-507, R.C.M. 1947; (2)En. Sec. 5, Ch. 196, L. 1965; amd. Sec. 1, Ch. 216, L. 1967; amd. Sec. 16, Ch. 350, L. 1974; amd. Sec. 1, Ch. 533, L. 1977; Sec. 62-505, R.C.M. 1947; R.C.M. 1947, 62-505(part), 62-507; amd. Sec. 8, Ch. 563, L. 1983.

23-4-202. Penalty for violations of law — authority of board — judicial review. (1) A person holding a race meet, an owner, trainer, or jockey participating in a race meet, without first being licensed under this chapter, and a person violating this chapter is guilty of a misdemeanor.

(2) The board or, upon the board's authorization, the board of stewards of a race meet at which they officiate may exclude from racecourses in this state a person whom the board considers detrimental to the best interest of racing as defined by rules of the board.

(3) As its own formal act or through an act of a board of stewards of a race meet, the board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed $1,000, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may forbid application for relicensure for a 2-year period.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed herein. The rules may include provisions for the following:

(a) summary imposition of penalty by the stewards of a race meet, including a fine and license suspension, subject to review under the contested case provisions of the Montana Administrative Procedure Act;

(b) stay of summary imposition of penalty by either the board or board of stewards;

(c) retention of purses pending final disposition of complaints, protests, or appeals of stewards' rulings;

(d) setting aside of up to 2% of exotic wagering on races to be used as a bonus for owners pursuant to 23-4-304(2), and up to 30% of the amount set aside may be used to defray administrative costs which shall be in addition to the 20% already withheld under 23-4-302;

(e) assessment of penalty and interest on the late payment of fines, which must be paid before licenses are reinstated; and

(f) definition of exotic forms of wagering on races to be allowed.

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter.

History: En. Sec. 8, Ch. 196, L. 1965; amd. Sec. 1, Ch. 183, L. 1974; amd. Sec. 19, Ch. 350, L. 1974; amd. Sec. 1, Ch. 306, L. 1977; R.C.M. 1947, 62-508(part); amd. Sec. 9, Ch. 563, L. 1983.

Cross-References

Administrative rules, contested cases, and judicial review, Title 2, ch. 4.

23-4-203. Race meets — when lawful. It is lawful to conduct race meets at a racetrack or otherwise at any time during the week.

History: En. Sec. 8, Ch. 196, L. 1965; amd. Sec. 1, Ch. 183, L. 1974; amd. Sec. 19, Ch. 350, L. 1974; amd. Sec. 1, Ch. 306, L. 1977; R.C.M. 1947, 62-508(part).

23-4-204. Race exclusively for Montana-bred horses — bonus for winner. (1) For the purpose of encouraging the breeding in this state of valuable registered horses, at least one race each day at each race meet shall be limited to horses bred in this state unless, in the board's judgment, there is an insufficient number of Montana-bred horses for such a race. If in the opinion of the board sufficient competition cannot be had among this class of horses, the race may be eliminated for the day and a substitute race provided instead.

(2) A sum equal to 10% of the first money of every purse won by a horse bred in this state shall be paid by the licensee conducting the race meet to the breeder of the horse. Only the money contributed by the licensee conducting the race meet may be considered in computing the bonus.

History: En. Sec. 9, Ch. 196, L. 1965; amd. Sec. 20, Ch. 350, L. 1974; amd. Sec. 2, Ch. 306, L. 1977; R.C.M. 1947, 62-509; amd. Sec. 10, Ch. 563, L. 1983.

23-4-205. Public liability insurance. For the protection of the public, exhibitors, and visitors, a person licensed to conduct a race meet under this chapter shall carry public liability insurance in an amount and form of contract approved by the board.

History: En. Sec. 10, Ch. 196, L. 1965; amd. Sec. 3, Ch. 216, L. 1967; amd. Sec. 21, Ch. 350, L. 1974; R.C.M. 1947, 62-510.

Cross-References

Liability insurance, Title 33, ch. 23 and 24.

Part 3

Parimutuel Betting

Part Cross-References

Gambling — when authorized, Art. III, sec. 9, Mont. Const.

23-4-301. Parimutuel betting — other betting illegal. (1) It is unlawful to make, report, record, or register a bet or wager on the result of a contest of speed, skill, or endurance of an animal, whether the contest is held within or outside of this state, except under this chapter.

(2) A licensee conducting a race meet under this chapter may provide a place in the race meet grounds or enclosure where the licensee may conduct or supervise the use of the parimutuel system by patrons on the result of the races conducted under this chapter and the rules of the board.

(3) A person licensed under this chapter to hold a race meet may, on the day a race meet is conducted, also provide a place in the race meet grounds or enclosure where the licensee may conduct or supervise the use of the parimutuel system by patrons on the results of the following simulcast or televised races:

(a) the Kentucky derby;
(b) the Preakness;
(c) the Belmont;
(d) the Travers;
(e) the all-American futurity;
(f) the Arlington million; and
(g) the Marlboro cup.

(4) It is unlawful to conduct pool selling, bookmaking, or to circulate handbooks or to bet or wager on a race of a licensed race meet, other than by the parimutuel system and in the race meet grounds or enclosure where the race is held, or to permit a minor to use the parimutuel system.

History: En. Sec. 11, Ch. 196, L. 1965; amd. Sec. 4, Ch. 216, L. 1967; amd. Sec. 22, Ch. 350, L. 1974; R.C.M. 1947, 62-511; amd. Sec. 11, Ch. 563, L. 1983; amd. Sec. 1, Ch. 221, L. 1987.

Compiler's Comments

1987 Amendment: Inserted (3).

23-4-302. Distribution of deposits — breakage. Each licensee conducting the parimutuel system shall distribute all sums deposited in any pool to the winner thereof, less an amount which, in the case of exotic wagering on races, shall not exceed 22%, and in all other races, shall not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

History: En. Sec. 12, Ch. 196, L. 1965; R.C.M. 1947, 62-512; amd. Sec. 12, Ch. 563, L. 1983.

23-4-303. Licensee's right to withhold deposits. In the event any government or governmental agency imposes a levy on a licensee by a special tax on the money so deposited under the parimutuel system or upon or against his receipts therefrom, the said licensee may withhold in addition to the aforesaid percent and breakage the amount of the tax so levied.

History: En. Sec. 13, Ch. 196, L. 1965; R.C.M. 1947, 62-513.

23-4-304. Gross receipts — department's percentage — collection and allocation. (1) The licensee shall pay to the department 1% of the gross receipts of each day's parimutuel betting at each race meet, which sums shall be paid to the department within 5 days after receipt by the licensee. At the end of each race meet the licensee shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance shall be paid to the department. Money paid to the department may be used for the expenses incurred in carrying out this chapter. The licensee shall, at the same time, pay to the department all sums collected under 23-4-202(4)(d) on exotic wagering on races.

(2) At the end of the racing season, sums collected under 23-4-202(4)(d) must be distributed by the department, after first passing through the board's agency fund account, to the licensed owners of those Montana-bred horses finishing in the money at the meet from which the sums derived. The owner's award must be calculated as follows:

(a) divide the total amount collected under 23-4-202(4)(d) by the total amount won by Montana-bred horses;

(b) multiply the quotient derived under subsection (2)(a) by the total amount of money won by each owner's Montana-bred horses.

(3) For purposes of the owner's award under subsection (2), "owner" means the individual, partnership, corporation, person, or other entity that owns the horse at the time of entry.

(4) Licensees may not consider the sums available under 23-4-202(4)(d) when establishing purses.

History: En. Sec. 14, Ch. 196, L. 1965; amd. Sec. 5, Ch. 216, L. 1967; amd. Sec. 23, Ch. 350, L. 1974; R.C.M. 1947, 62-514; amd. Sec. 13, Ch. 563, L. 1983.

23-4-305. Deposit of unclaimed money. Each licensee holding a race meet shall, within 30 days of the end of the meet, report to the board the total face value of all unclaimed winning tickets from each parimutuel pool. The money from unclaimed winning tickets must be retained by the licensee for capital improvement approved by the board.

History: En. 62-515 by Sec. 1, Ch. 199, L. 1974; R.C.M. 1947, 62-515; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 14, Ch. 563, L. 1983.

CHAPTER 5

GAMBLING

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Chapter Cross-References

Gambling prohibited unless authorized by Legislature or the people, Art. III, sec. 9, Mont. Const.

Part 1

Prohibited Games — Penalties

Part Cross-References

Local government — no power to regulate gambling unless delegated, 7-1-112.

Part 1 effective unless specifically superseded by other gambling law, 23-5-303, 23-5-511.

Bingo and raffles authorized, 23-5-411.

Gambling — basis for discharge of highway patrolman, 44-1-612.

23-5-101. Definitions. (1) A slot machine is defined as a machine operated by inserting a coin, token, chip, trade check, or paper currency therein by the player and from the play of which he obtains or may obtain money, checks, chips, tokens, or paper currency redeemable in money. Merchandise vending machines where the element of chance does not enter into their operation are not within the provisions of this part.

(2) In addition to their ordinary meaning, the words "person" or "persons", as used in this part, include both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious, fraternal, and charitable organizations.

History: En. Secs. 2, 3, Ch. 197, L. 1949; Secs. 94-2429, 94-2431, R.C.M. 1947; redes. 94-8-429, 94-8-430 by Sec. 29, Ch. 513, L. 1973; amd. Secs. 24, 25, Ch. 508, L. 1977; R.C.M. 1947, 94-8-429, 94-8-430.

23-5-102. Gambling prohibited — penalty. Except as otherwise provided by law, a person who engages in gambling in any form with cards, dice, or other implements or devices of any kind wherein anything valuable may be wagered upon the outcome or who keeps any establishment, place, equipment, or apparatus for such gambling or any agents or employees for such purpose is guilty of a misdemeanor and is punishable by a fine of not less than $100 or more than $1,000 or imprisonment not less than 3 months or more than 1 year or by both such fine and imprisonment.

History: En. Sec. 600, Pen. C. 1895; amd. Sec. 1, p. 80, L. 1897; amd. Secs. 1, 2 and 3, pp. 166, 167, L. 1901; amd. Sec. 1, Ch. 115, L. 1907; re-en. Sec. 8416, Rev. C. 1907; amd. Sec. 1, Ch. 86, L. 1917; re-en. Sec. 11159, R.C.M. 1921; Cal. Pen. C. Sec. 330; re-en. Sec. 11159, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1937; Sec. 94-2401, R.C.M. 1947; redes. 94-8-401 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 19, Ch. 508, L. 1977; R.C.M. 1947, 94-8-401.

Cross-References

Discipline of highway patrolman for off-duty presence where illegal gambling is conducted, 44-1-612.

23-5-103. Possession of gambling implements prohibited. Any person who has in his possession or under his control or who permits to be placed, maintained, or kept in any room, space, enclosure, or building owned, leased, or occupied by him or under his management or control any faro box, faro layout, roulette wheel, roulette table, crap table, punchboard, or any machine or apparatus of the kind mentioned in 23-5-102 is punishable by a fine of not less than $100 or more than $1,000 and may be imprisoned for not less than 3 months or more than 1 year in the discretion of the court, provided that this section shall not apply to a public officer or to a person coming into possession thereof in or by reason of the performance of an official duty and holding the same to be disposed of according to law.

History: En. Sec. 2, Ch. 115, L. 1907; Sec. 8417, Rev. C. 1907; re-en. Sec. 11160, R.C.M. 1921; re-en. Sec. 11160, R.C.M. 1935; Sec. 94-2404, R.C.M. 1947; redes. 94-8-404 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 20, Ch. 508, L. 1977; R.C.M. 1947, 94-8-404.

23-5-104. Slot machines — possession unlawful — exception. (1) Except as provided in subsections (2) through (5), it shall be a misdemeanor and punishable as hereinafter provided for any person to use, possess, operate, keep, or maintain for use or operation or otherwise, anywhere within the state of Montana, any slot machine of any sort or kind whatsoever.

(2) The provisions of subsection (1) and 23-5-121 do not apply to antique slot machines possessed, located, and used in accordance with subsections (2) through (5). For the purposes of subsections (2) through (5), an antique slot machine is a slot machine manufactured prior to 1950, the operation of which is exclusively mechanical in nature and is not aided in whole or in part by any electronic means.

(3) Except as provided in subsection (4), antique slot machines may be possessed, located, and operated only in a private residential dwelling.

(4) Antique slot machines may be possessed or located for purposes of display only and not for operation in any public museum owned and operated by the state of Montana, or a county, or a city.

(5) No antique slot machine may be operated for any commercial or charitable purpose.

History: En. Sec. 1, Ch. 197, L. 1949; Sec. 94-2429, R.C.M. 1947; redes. 94-8-428 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-428; (2) thru (5)En. Sec. 1, Ch. 503, L. 1983; amd. Sec. 2, Ch. 503, L. 1983.

Cross-References

Video draw poker and keno machines, Title 23, ch. 5, part 6.

23-5-105. Penalty for possession or permitting use of slot machine. Any person who violates any of the provisions of 23-5-104 or who permits the use of any slot machine, as herein defined, on any place or premises owned, occupied, or controlled by him is guilty of a misdemeanor and is punishable by a fine of not less than $100 or more than $1,000 or by imprisonment in the county jail for not less than 3 months or more than 1 year or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 197, L. 1949; Sec. 94-2432, R.C.M. 1947; redes. 94-8-431 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 26, Ch. 508, L. 1977; R.C.M. 1947, 94-8-431.

23-5-106. Brace and bunco games prohibited. Every person who uses or deals with or wins any money or property by the use of brace faro, any two-card faro box, any brace roulette wheel or roulette table, any brace apparatus, with loaded dice or with marked cards, or by any game commonly known as a confidence game or bunco is punishable by imprisonment in the state prison not exceeding 5 years, by a fine of not more than $50,000, or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 115, L. 1907; Sec. 8419, Rev. C. 1907; re-en. Sec. 11162, R.C.M. 1921; re-en. Sec. 11162, R.C.M. 1935; Sec. 94-2406, R.C.M. 1947; redes. 94-8-406 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-406; amd. Sec. 7, Ch. 198, L. 1981.

23-5-107. Obtaining money by means of gambling games or tricks considered theft. Every person who, by means of any game, device, sleight-of-hand trick, or other means whatever, by the use of cards or other implements other than those mentioned in 23-5-106, or while betting on sides or hands of any such game or play, fraudulently obtains from another person money or property of any description is guilty of theft of property of like value.

History: En. Sec. 3, Ch. 115, L. 1907; Sec. 8418, Rev. C. 1907; re-en. Sec. 11161, R.C.M. 1921; Cal. Pen. C. Sec. 332; re-en. Sec. 11161, R.C.M. 1935; Sec. 94-2405, R.C.M. 1947; redes. 94-8-405 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 70, Ch. 359, L. 1977; R.C.M. 1947, 94-8-405.

Cross-References

Theft, 45-6-301.

23-5-108. Soliciting or persuading persons to visit gambling resorts prohibited. Any person who persuades or solicits another to visit any room, tent, apartment, or place used or represented by the person soliciting or persuading to be a place used for the purpose of running any of the games prohibited by this part shall be punished by a fine of not less than $100 or more than $1,000 or imprisonment not less than 3 months or more than 1 year or by both such fine and imprisonment in the county jail.

History: En. Sec. 5, Ch. 115, L. 1907; Sec. 8420, Rev. C. 1907; re-en. Sec. 11163, R.C.M. 1921; Cal. Pen. C. Sec. 318; re-en. Sec. 11163, R.C.M. 1935; Sec. 94-2407, R.C.M. 1947; redes. 94-8-407 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-407.

Cross-References

Classification of offenses — definition of "felony" and "misdemeanor", 45-1-201, 45-2-101.

23-5-109. Penalty for second offense. Every person who, having been convicted of a violation of any of the provisions of this part which is punishable by fine, commits another such violation after such conviction is punishable by a fine of not less than $500 or more than $1,000 and by imprisonment in the county jail for not less than 6 months or more than 1 year.

History: En. Sec. 6, Ch. 115, L. 1907; Sec. 8421, Rev. C. 1907; re-en. Sec. 11164, R.C.M. 1921; re-en. Sec. 11164, R.C.M. 1935; Sec. 94-2408, R.C.M. 1947; redes. 94-8-408 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-408.

Cross-References

Classification of offenses — definition of "felony" and "misdemeanor", 45-1-201, 45-2-101.

23-5-110 through 23-5-120 reserved.

23-5-121. Duty of peace officer to seize gambling implements and apparatus — exception. (1) It shall be the duty of every officer authorized to make arrests to seize every machine, apparatus, or instrument answering to the description contained in this part or which may be used for the carrying on or conducting of any game or games mentioned in this part and to arrest the person actually or apparently in possession or control thereof or of the premises in which the same may be found, if any such person be present at the time of the seizure, and to bring the machine, apparatus, or instrument and the prisoner, if there be one, before a committing magistrate.

(2) This section does not apply to antique slot machines, the possession, location, or use of which is authorized by subsections (2) through (5) of 23-5-104.

History: En. Sec. 8, Ch. 115, L. 1907; Sec. 8423, Rev. C. 1907; re-en. Sec. 11166, R.C.M. 1921; re-en. Sec. 11166, R.C.M. 1935; Sec. 94-2410, R.C.M. 1947; redes. 94-8-410 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-410; amd. Sec. 3, Ch. 503, L. 1983.

Cross-References

Seizure and disposition of property, Title 46, ch. 5, parts 1 through 3.

Arrests, Title 46, ch. 6.

23-5-122. Destruction of gambling apparatus — when required. The magistrate before whom any machine, apparatus, or instrument is brought pursuant to 23-5-121 must, if there is a prisoner and if he holds such prisoner, cause the machine, apparatus, or instrument to be delivered to the county attorney to be used as evidence on the trial of such prisoner. If there is no prisoner or if the magistrate does not hold the prisoner, the magistrate must cause the immediate and public destruction of the machine, apparatus, or instrument in his own presence. No person owning or claiming to own any such machine, apparatus, or instrument so destroyed has any right of action against any person or against the state, county, or city for the value of such article or for damages. It is the duty of the county attorney to produce such articles in court on the trial of the case. It is the duty of the trial court, after the disposition of the case and whether the defendant is convicted, acquitted, or fails to appear for trial, to cause the immediate and public destruction of any such article by the sheriff or any other officer or person designated by the court.

History: En. Sec. 9, Ch. 115, L. 1907; Sec. 8424, Rev. C. 1907; re-en. Sec. 11167, R.C.M. 1921; re-en. Sec. 11167, R.C.M. 1935; Sec. 94-2411, R.C.M. 1947; redes. 94-8-411 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 21, Ch. 508, L. 1977; R.C.M. 1947, 94-8-411.

23-5-123. Disposal of money confiscated by reason of violation of gambling laws. All money seized or taken by any peace officer and confiscated by order of any court, by reason of a violation of the gambling laws of the state of Montana, shall be deposited with the county treasurer of the county in which such seizure and confiscation was made and shall be credited to the poor fund of the county.

History: En. Sec. 1, Ch. 25, L. 1933; re-en. Sec. 11167.1, R.C.M. 1935; Sec. 94-2412, R.C.M. 1947; redes. 94-8-412 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-412.

Cross-References

Funding and use of county poor fund, 53-2-322.

23-5-124. Duty of peace officer to make complaint. Every county attorney, sheriff, constable, chief of police, marshal, or police officer must inform against and make complaint and diligently prosecute persons whom they know or concerning whom they may be informed or whom they may have reasonable cause to believe to be offenders against the provisions of this part. The neglect or refusal of any such officer to make complaint against or diligently prosecute persons he has reasonable cause to believe to be offenders against the provisions of this part shall be deemed sufficient cause for removal from office.

History: En. Sec. 11, Ch. 115, L. 1907; Sec. 8426, Rev. C. 1907; re-en. Sec. 11169, R.C.M. 1921; re-en. Sec. 11169, R.C.M. 1935; Sec. 94-2414, R.C.M. 1947; redes. 94-8-414 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-414.

23-5-125. Duty of mayors to enforce law. It shall be the duty of every mayor of every town or city in this state to cause this part to be diligently enforced and to cause the police officers of his city or town to arrest and to make complaint against any and all persons whom he or they know or have reasonable cause to believe to be offenders against any of the provisions of this part.

History: En. Sec. 12, Ch. 115, L. 1907; Sec. 8427, Rev. C. 1907; re-en. Sec. 11170, R.C.M. 1921; re-en. Sec. 11170, R.C.M. 1935; Sec. 94-2415, R.C.M. 1947; redes. 94-8-415 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-415.

23-5-126. Officers neglecting duty subject to forfeiture of office. Every county attorney, sheriff, mayor, constable, chief of police, marshal, or police officer who shall refuse or neglect to perform any of the duties imposed upon him by any of the provisions of this part shall be guilty of a misdemeanor and be punishable by a fine of not less than $100 or more than $3,000 or imprisonment for not less than 6 months or more than 1 year in the county jail. A conviction under this section shall, unless set aside, also work a forfeiture of the office of such officer and operate as a removal from office. But a prosecution under this section shall not bar or interfere with any proceeding or action for removal from office which may be brought under any other provision of law or statute or affect or limit the effect or operation of any other statute regarding removals or suspensions from office.

History: En. Sec. 13, Ch. 115, L. 1907; Sec. 8428, Rev. C. 1907; re-en. Sec. 11171, R.C.M. 1921; re-en. Sec. 11171, R.C.M. 1935; Sec. 94-2416, R.C.M. 1947; redes. 94-8-416 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-416.

Cross-References

Termination of Deputy Sheriff — hearing, 7-32-2107 through 7-32-2109.

Discipline of policemen — hearing, 7-32-4155 through 7-32-4164.

23-5-127. Receiving money to protect offenders prohibited. Every state, county, city, or township officer or other person who shall ask for, receive, or collect any money or valuable consideration, either for his own or for the public use or the use of any other person or persons, for and with the understanding that he will protect or exempt any person from arrest or conviction for any violation of the provisions of this part or that he will abstain from arresting or prosecuting or causing to be arrested or prosecuted any person offending against any of the provisions of this part or that he will permit any of the things prohibited by this part to be done or carried on and every such state, county, city, or township officer who shall grant, issue, or deliver or cause to be issued or delivered to any person or persons any license, permit, or other privilege giving or pretending to give any authority or right to any person or persons to carry on, conduct, open, or cause to be conducted, opened, or carried on any game or games which are forbidden by any of the provisions of this part is guilty of a felony.

History: En. Sec. 14, Ch. 115, L. 1907; Sec. 8429, Rev. C. 1907; re-en. Sec. 11172, R.C.M. 1921; Cal. Pen. C. Sec. 337; re-en. Sec. 11172, R.C.M. 1935; Sec. 94-2417, R.C.M. 1947; redes. 94-8-417 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-417.

Cross-References

Public officials — bribery and corruption, Title 45, ch. 7, part 1.

Penalty for felony when none otherwise specified, 46-18-213.

23-5-128 through 23-5-130 reserved.

23-5-131. Losses at gambling may be recovered in civil action. If any person, by playing or betting at any of the games prohibited by this part, loses to another person any sum of money or thing of value and pays or delivers the same or any part thereof to any person connected with the operating or conducting of such game, either as owner, dealer, or operator, the person who so loses and pays or delivers may, at any time within 60 days next after the loss and payment or delivery, sue for and recover the money or thing of value so lost and paid or delivered or any part thereof from any person having any interest, direct or contingent, in the game as owner, backer, or otherwise, with costs of suit, by civil action before any court of competent jurisdiction, together with exemplary damages which in no case shall be less than $50 or more than $500, and may join as defendants in said suit all persons having any interest, direct or contingent, in such game as backers, owners, or otherwise.

History: En. Sec. 15, Ch. 115, L. 1907; Sec. 8430, Rev. C. 1907; re-en. Sec. 11173, R.C.M. 1921; re-en. Sec. 11173, R.C.M. 1935; Sec. 94-2418, R.C.M. 1947; redes. 94-8-418 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-418.

Cross-References

Exemplary damages allowed, 27-1-221.

Tort liability for willful acts, Title 27, ch. 1, part 7.

23-5-132. Remedy available to dependents. If any person losing such money or thing of value does not, within 60 days, without collusion or deceit, sue and with effect prosecute for the money or thing of value so lost and paid or delivered, any person or a guardian of any person dependent in any degree for support upon or entitled to the earnings of such persons losing said money or thing of value or any citizen for the use of the person so dependent may, within 1 year, sue for and recover the same, with costs of suit and exemplary damages as aforesaid, against any and all persons having any interest, direct or contingent, in the game as backers, owners, or otherwise.

History: **En. Sec. 16, Ch. 115, L. 1907; Sec. 8431, Rev. C. 1907; re-en. Sec. 11174, R.C.M. 1921; re-en. Sec. 11174, R.C.M. 1935; Sec. 94-2419, R.C.M. 1947; redes. 94-8-419 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-419.**

23-5-133. Pleadings in actions to recover money lost. In the prosecutions of such actions it shall be sufficient for the complaint to allege that the defendant is indebted to the plaintiff's use the money or thing of value so lost and paid or delivered, whereby the plaintiff's action accrued to him or to the person for whose use the suit is brought, without setting forth the special matter. In case suit is brought by a plaintiff for the use of another person, that fact and the name of the person for whose use the suit is brought shall be stated.

History: **En. Sec. 17, Ch. 115, L. 1907; Sec. 8432, Rev. C. 1907; re-en. Sec. 11175, R.C.M. 1921; re-en. Sec. 11175, R.C.M. 1935; Sec. 94-2420, R.C.M. 1947; redes. 94-8-420 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-420.**

Cross-References

General rules of pleading, Rule 8, M.R.Civ.P. (see Title 25, ch. 20).

23-5-134. Discovery. Every person liable in a civil action under this part may be compelled to answer, upon oath, interrogatories annexed to the complaint in such civil action for the purpose of discovery of his liability.

History: **En. Sec. 18, Ch. 115, L. 1907; Sec. 8433, Rev. C. 1907; re-en. Sec. 11176, R.C.M. 1921; re-en. Sec. 11176, R.C.M. 1935; Sec. 94-2421, R.C.M. 1947; redes. 94-8-421 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-421(part).**

Cross-References

Discovery, Rules 26 through 37, M.R.Civ.P. (see Title 25, ch. 20).

23-5-135. Discharge of defendant. Upon discovery and repayment of the money or other thing, the person discovering and repaying the same, with costs and such an amount of exemplary damages as may be agreed upon by the parties or fixed by the court, shall be acquitted and discharged from any further or other forfeiture, punishment, penalty, or prosecution he or they may have incurred for so winning such money or thing discovered and repaid.

History: **En. Sec. 18, Ch. 115, L. 1907; Sec. 8433, Rev. C. 1907; re-en. Sec. 11176, R.C.M. 1921; re-en. Sec. 11176, R.C.M. 1935; Sec. 94-2421, R.C.M. 1947; redes. 94-8-421 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-421(part).**

23-5-136 through 23-5-140 reserved.

23-5-141. Immunity of witnesses. No person shall be excused from attending or testifying or producing any books, papers, documents, or any thing or things before any court or magistrate upon any investigation, proceeding, or trial for a violation of any of the provisions of this part upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence of, documentary or otherwise, and no testimony or evidence so given or produced shall be received against him in any civil or criminal proceeding, action, or investigation.

History: En. Sec. 20, Ch. 115, L. 1907; Sec. 8435, Rev. C. 1907; re-en. Sec. 11178, R.C.M. 1921; re-en. Sec. 11178, R.C.M. 1935; Sec. 94-2423, R.C.M. 1947; redes. 94-8-423 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-423.

Cross-References

Self-incrimination, Art. II, sec. 25, Mont. Const.

Self-incrimination and immunity, 46-4-305.

23-5-142. Ordinances concerning gambling. No ordinance regarding gambling or gambling houses may be passed by any city, or town, county, or other political subdivision of the state except in compliance with parts 3, 4, and 5 of this chapter.

History: En. Sec. 21, Ch. 115, L. 1907; Sec. 8436, Rev. C. 1907; re-en. Sec. 11179, R.C.M. 1921; re-en. Sec. 11179, R.C.M. 1935; Sec. 94-2424, R.C.M. 1947; redes. 94-8-424 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 23, Ch. 508, L. 1977; R.C.M. 1947, 94-8-424.

Cross-References

Powers requiring delegation — regulating gambling, 7-1-112.

23-5-143. Lessor of buildings used for gambling purposes treated as principal. Whenever premises are occupied for the doing of any of the things or running any of the games prohibited by this part, the lease or agreement under which they are so occupied shall be absolutely void at the instance of the lessor, who may at any time obtain possession by civil action or by action of unlawful detainer. If any person leases premises for any such purpose or knowingly permits them to be used or occupied for such purpose or purposes or, knowing them to be so occupied or used, fails immediately to prosecute in good faith an action or proceeding for the recovery of the premises, such lessor shall be considered in all cases, civil and criminal, as a principal in running the games or doing the things run or done in such building in violation of this part and shall be dealt with and punished accordingly.

History: En. Sec. 19, Ch. 115, L. 1907; Sec. 8434, Rev. C. 1907; re-en. Sec. 11177, R.C.M. 1921; re-en. Sec. 11177, R.C.M. 1935; Sec. 94-2422, R.C.M. 1947; redes. 94-8-422 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 22, Ch. 508, L. 1977; R.C.M. 1947, 94-8-422.

23-5-144. Maintaining gambling apparatus a nuisance. Any article, machine, or apparatus maintained or kept in violation of any of the provisions of this part is a public nuisance, but the punishment for the maintaining or keeping of the same shall be as provided in this part.

History: En. Sec. 7, Ch. 115, L. 1907; re-en. Sec. 8422, Rev. C. 1907; re-en. Sec. 11165, R.C.M. 1921; re-en. Sec. 11165, R.C.M. 1935; Sec. 94-2409, R.C.M. 1947; redes. 94-8-409 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-409.

Cross-References

Public nuisances, Title 27, ch. 30, parts 1 and 2.

Part 2

Prohibited Lotteries

Part Cross-References

Bingo and raffles — exempt from ch. 5, part 2, 23-5-403.

23-5-201. Lottery defined. A lottery is any scheme for the disposal or distribution of property by chance among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it or for any share or interest in such property upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, gift enterprise, or by whatever name the same may be known.

History: En. Sec. 580, Pen. C. 1895; re-en. Sec. 8406, Rev. C. 1907; re-en. Sec. 11149, R.C.M. 1921; Cal. Pen. C. Sec. 319; amd. Sec. 1, Ch. 36, L. 1935; re-en. Sec. 11149, R.C.M. 1935; Sec. 94-3001, R.C.M. 1947; redes. 94-8-301 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 17, Ch. 508, L. 1977; R.C.M. 1947, 94-8-301.

23-5-202. Application. This part shall not apply to the provisions of part 4 of this chapter, to Title 23, chapter 5, part 10, or to the giving away of cash or merchandise attendance prizes or premiums by public drawings at agricultural fairs or rodeo associations in this state, and the county fair commissioners of agricultural fairs or rodeo associations in this state may give away at such fairs cash or merchandise attendance prizes or premiums by public drawings.

History: En. Sec. 2, Ch. 36, L. 1935; re-en. Sec. 11149.1, R.C.M. 1935; Sec. 94-3002, R.C.M. 1947; redes. 94-8-302 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 18, Ch. 508, L. 1977; R.C.M. 1947, 94-8-302; amd. Sec. 21, Ch. 669, L. 1985.

23-5-203. Punishment for drawing lottery. Every person who contrives, prepares, sets up, proposes, or draws any lottery is guilty of a misdemeanor.

History: En. Sec. 581, Pen. C. 1895; re-en. Sec. 8407, Rev. C. 1907; re-en. Sec. 11150, R.C.M. 1921; re-en. Sec. 11150, R.C.M. 1935; Sec. 94-3003, R.C.M. 1947; redes. 94-8-303 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-303.

Cross-References

Bingo and raffles — exempt from ch. 5, part 2, 23-5-403.

23-5-204. Punishment for selling lottery tickets. Every person who sells, gives, or in any manner whatever furnishes or transfers to or for any other person any ticket, chance, share, or interest or any paper, certificate, or instrument purporting or understood to be or to represent any ticket, chance, share, or interest in or depending upon the event of any lottery is guilty of a misdemeanor.

History: En. Sec. 582, Pen. C. 1895; re-en. Sec. 8408, Rev. C. 1907; re-en. Sec. 11151, R.C.M. 1921; Cal. Pen. C. Sec. 321; re-en. Sec. 11151, R.C.M. 1935; Sec. 94-3004, R.C.M. 1947; redes. 94-8-304 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-304.

Cross-References

Bingo and raffles — exempt from ch. 5, part 2, 23-5-403.

23-5-205. Aiding lotteries. Every person who aids or assists, either by printing, writing, advertising, publishing, or otherwise, in setting up, managing, or drawing any lottery or in selling or disposing of any ticket, chance, or share therein is guilty of a misdemeanor.

History: En. Sec. 583, Pen. C. 1895; re-en. Sec. 8409, Rev. C. 1907; re-en. Sec. 11152, R.C.M. 1921; Cal. Pen. C. Sec. 322; re-en. Sec. 11152, R.C.M. 1935; Sec. 94-3005, R.C.M. 1947; redes. 94-8-305 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-305.

23-5-206. Lottery offices — advertising lottery offices. Every person who opens, sets up, or keeps, by himself or by any other person, any office or any other place for the sale of or for registering the number of any ticket in any lottery within or without this state or who, by printing, writing, or otherwise, advertises or publishes the setting up, opening, or using of any such office is guilty of a misdemeanor.

History: En. Sec. 584, Pen. C. 1895; re-en. Sec. 8410, Rev. C. 1907; re-en. Sec. 11153, R.C.M. 1921; Cal. Pen. C. Sec. 323; re-en. Sec. 11153, R.C.M. 1935; Sec. 94-3006, R.C.M. 1947; redes. 94-8-306 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-306.

23-5-207. Insuring lottery tickets — publishing offers to insure. Every person who insures or receives any consideration for insuring for or against the drawing of any ticket in any lottery whatever, whether drawn or to be drawn within this state or not, or who receives any valuable consideration upon any agreement to repay any sum or deliver the same or any other property if any lottery ticket or number of any ticket in any lottery shall prove fortunate or unfortunate or shall be drawn or not be drawn at any particular time or in any particular order or who promises or agrees to pay any sum of money or to deliver any goods, things in action, or property or to forbear to do anything for the benefit of any person, with or without consideration, upon any event or contingency dependent on the drawing of any ticket in any lottery or who publishes any notice or proposal of any of the purposes aforesaid is guilty of a misdemeanor.

History: En. Sec. 585, Pen. C. 1895; re-en. Sec. 8411, Rev. C. 1907; re-en. Sec. 11154, R.C.M. 1921; Cal. Pen. C. Sec. 324; re-en. Sec. 11154, R.C.M. 1935; Sec. 94-3007, R.C.M. 1947; redes. 94-8-307 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-307.

23-5-208. Property offered for disposal in lottery forfeited. All moneys or property offered for sale or distribution in violation of any of the provisions of this part are forfeited to the state and may be recovered by information filed or by an action brought by the attorney general or by any county attorney in the name of the state. Upon the filing of the information or complaint, the clerk of the court or, if the suit is in a justice court, the justice must issue an attachment against the property mentioned in the complaint or information, which attachment has the same force and effect against such property and is issued in the same manner as attachments are issued from the district courts in civil cases.

History: En. Sec. 586, Pen. C. 1895; re-en. Sec. 8412, Rev. C. 1907; re-en. Sec. 11155, R.C.M. 1921; Cal. Pen. C. Sec. 325; re-en. Sec. 11155, R.C.M. 1935; Sec. 94-3008, R.C.M. 1947; redes. 94-8-308 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-308.

Cross-References

Prejudgment attachment, Title 27, ch. 18.

23-5-209. Letting building for lottery purposes. Every person who lets or permits to be used any building or vessel or any portion thereof, knowing that it is to be used for setting up, managing, or drawing any lottery or for the purpose of selling or disposing of lottery tickets, is guilty of a misdemeanor.

History: En. Sec. 587, Pen. C. 1895; re-en. Sec. 8413, Rev. C. 1907; re-en. Sec. 11156, R.C.M. 1921; Cal. Pen. C. Sec. 326; re-en. Sec. 11156, R.C.M. 1935; Sec. 94-3009, R.C.M. 1947; redes. 94-8-309 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-309.

23-5-210. Lotteries out of this state. The provisions of this part are applicable to lotteries drawn or to be drawn out of this state, whether authorized or not by the laws of the state or country where they are drawn or to be drawn, in the same manner as to lotteries drawn or to be drawn within this state.

History: En. Sec. 588, Pen. C. 1895; re-en. Sec. 8414, Rev. C. 1907; re-en. Sec. 11157, R.C.M. 1921; re-en. Sec. 11157, R.C.M. 1935; Sec. 94-3010, R.C.M. 1947; redes. 94-8-310 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-310.

23-5-211. Punishment. Every person convicted of any of the offenses mentioned in this part is punishable by imprisonment in the county jail not exceeding 1 year or by fine not exceeding $2,000, or both.

History: En. Sec. 589, Pen. C. 1895; re-en. Sec. 8415, Rev. C. 1907; re-en. Sec. 11158, R.C.M. 1921; re-en. Sec. 11158, R.C.M. 1935; Sec. 94-3011, R.C.M. 1947; redes. 94-8-311 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-311.

Part 3

Card Games Act

23-5-301. Short title. This part may be cited as the "Montana Card Games Act".

History: En. 62-701 by Sec. 1, Ch. 293, L. 1974; R.C.M. 1947, 62-701.

23-5-302. Definitions. As used in this part and unless the context requires otherwise, the following terms or phrases have the following meanings:

(1) "Authorized card game" means any card game permitted by this part.

(2) "Card game" means any game played with cards for which the prize is money or any item of value.

History: En. 62-702 by Sec. 2, Ch. 293, L. 1974; R.C.M. 1947, 62-702.

23-5-303. Prior laws still in effect. To the extent that they are not specifically superseded by provisions of this part or any other gambling law, the provisions of part 1 of this chapter remain in effect.

History: En. 62-714 by Sec. 14, Ch. 293, L. 1974; R.C.M. 1947, 62-714.

23-5-304 through 23-5-310 reserved.

23-5-311. Authorized card games. (1) It is unlawful for any person to conduct or participate in any card game or make any tables available for the playing of card games except those card games authorized by this part.

(2) The card games authorized by this part are and are limited to the card games known as bridge, cribbage, hearts, panguingue, pinochle, pitch, rummy, whist, solo, and poker.

History: En. 62-703 by Sec. 3, Ch. 293, L. 1974; R.C.M. 1947, 62-703.

23-5-312. Prizes not to exceed one hundred dollars. No prize for any individual game shall exceed the value of $100. Games shall not be combined in any manner so as to increase the value of the ultimate prize awarded.

History: En. 62-704 by Sec. 4, Ch. 293, L. 1974; R.C.M. 1947, 62-704.

23-5-313. Rules of play to be posted — rake-off approved. Rules governing the conduct of each game shall be prominently posted on the premises of any licensed establishment where such game is conducted. Such rules shall include notice of the maximum percentage rake-off, if any, and shall require that the person taking the rake-off do so in an obvious manner and only after announcing the amount of each rake-off, which shall only be taken at the conclusion of each game when the winner of each individual pot has been determined.

History: En. 62-705 by Sec. 5, Ch. 293, L. 1974; R.C.M. 1947, 62-705.

23-5-314. Gambling on cash basis. (1) In every authorized card game the consideration paid for the chance to play shall be strictly cash. Every participant must present the money with which he intends to play the game at the time the game is played. No check, credit card, note, I O U, or other evidence of indebtedness may be offered or accepted as part of the price of participating in a card game or as payment of a debt incurred therein.

(2) No action based on such a debt is maintainable in a court of this state.

History: En. 62-706 by Sec. 6, Ch. 293, L. 1974; amd. Sec. 1, Ch. 508, L. 1977; R.C.M. 1947, 62-706.

23-5-315. Minors not to participate. No person under the age of 18 years may be permitted to participate in any card game held, operated, or conducted pursuant to this part.

History: En. 62-709 by Sec. 9, Ch. 293, L. 1974; amd. Sec. 4, Ch. 508, L. 1977; R.C.M. 1947, 62-709.

23-5-316. Cheating unlawful. It shall be unlawful to conduct or participate in a card game authorized by this part in any manner which results in cheating, misrepresentation, or other such disreputable tactics which distract from a fair and equal chance for all participants or which otherwise affects the outcome of the game.

History: En. 62-710 by Sec. 10, Ch. 293, L. 1974; amd. Sec. 5, Ch. 508, L. 1977; R.C.M. 1947, 62-710.

23-5-317 through 23-5-320 reserved.

23-5-321. Licensing by local governing bodies. (1) Any city, town, or county may issue licenses for the games provided for in this part to be conducted on premises which have been licensed for the sale of liquor, beer, food, cigarettes, or any other consumable products. Within the cities or towns, such licenses may be issued by the city or town council or commission. Licenses for games conducted on premises outside the limits of any city or town may be issued by the county commissioners of the respective counties. When a license has been required by any city, town, or county, no game as provided for in this part shall be conducted on any premises which have been licensed for the sale of liquor, beer, food, cigarettes, or any other consumable product without such license having first been obtained.

(2) Any governing body may charge an annual license fee for each license so issued under this part, which license fee, if any, shall expire on June 30 of each year, and such fee shall be prorated.

(3) Any license issued pursuant to this part shall be deemed to be a revocable privilege, and no holder thereof may acquire any vested rights therein or thereunder.

History: En. 62-707 by Sec. 7, Ch. 293, L. 1974; amd. Sec. 2, Ch. 508, L. 1977; R.C.M. 1947, 62-707.

Cross-References

Local government — no power to regulate gambling unless delegated, 7-1-112.

23-5-322. Regulation by governing body. (1) The governing body authorized to issue gambling licenses pursuant to this part may establish by ordinance or resolution regulations governing the qualifications for and the issuing, suspension, and revocation of such gambling licenses. These regulations, in addition to any other requirements, shall provide that no license may be issued to:

(a) a person who has been convicted of being the keeper or is keeping a house of prostitution;

(b) a person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality, under the laws of the federal government or any state of the United States;

(c) a person whose license issued under this act has been revoked for cause;

(d) a person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application;

(e) a person who is not a citizen of the United States and who has not been a resident of the state of Montana for at least 1 year immediately preceding the filing of the application for license;

(f) a person who is not the owner and operator of the business.

(2) Additional regulations may also be adopted for the purpose of the protection of the public health, welfare, and safety of the citizens of the state of Montana and to assure compliance with the intent of this part.

History: En. 62-708 by Sec. 8, Ch. 293, L. 1974; amd. Sec. 3, Ch. 508, L. 1977; R.C.M. 1947, 62-708.

Cross-References

Local government — no power to regulate gambling unless delegated, 7-1-112.

23-5-323. Peace officers' responsibilities. It shall be the duty of all peace officers to enforce the provisions of this part and to arrest and complain against any person violating any provision of this part. It shall be the duty of the county attorney of the respective county to prosecute all violations of this part in the manner and form as is provided by law, and it shall be a misdemeanor for any such person or persons to knowingly fail to perform his or her duty under this section.

History: En. 62-711 by Sec. 11, Ch. 293, L. 1974; R.C.M. 1947, 62-711.

23-5-324 through 23-5-330 reserved.

23-5-331. Penalty. Every person who willfully violates or who procures, aids, or abets in the willful violation of this part or any ordinance, resolution, or regulation adopted pursuant thereto shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $1,000 or imprisonment in the county jail for not more than 3 months, or both.

History: En. 62-712 by Sec. 12, Ch. 293, L. 1974; R.C.M. 1947, 62-712.

23-5-332. Jurisdiction. Jurisdiction for all cases involving violations of this part is in the district court.

History: En. 62-713 by Sec. 13, Ch. 293, L. 1974; amd. Sec. 6, Ch. 508, L. 1977; R.C.M. 1947, 62-713.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Part 4

Bingo and Raffles

23-5-401. Short title. This part shall be known and may be cited and referred to as the "Bingo and Raffles Law".

History: En. 62-715 by Sec. 1, Ch. 294, L. 1974; R.C.M. 1947, 62-715.

23-5-402. *(Temporary)* **Definitions.** As used in this part, unless the context requires otherwise, the following terms or phrases shall have the following meanings:

(1) "Game of chance" means the specific kind of game of chance commonly known as:

(a) "bingo", in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random;

(b) "raffles", which are conducted by drawing for prizes.

(2) "Equipment" means:

(a) with respect to bingo, the receptacle and numbered objects drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the boards or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address system, and all other articles essential to the operation, conduct, and playing of bingo; or

(b) with respect to raffles, the implements, devices, and machines designed, intended, or used for the conduct of raffles and the identification of the winning number or unit and the ticket or other evidence of right to participate in raffles.

23-5-402. *(Effective July 1, 1988)* **Definitions.** As used in this part, unless the context requires otherwise, the following terms or phrases shall have the following meanings:

(1) "Bingo or keno machine" means an electronic video game machine that, upon insertion of cash, is available to play or simulate the play of the game of bingo or keno, utilizing a video display and microprocessors, in which by the skill of the player or by chance, or both, the player may receive free games or credits that can be redeemed for cash. The term does not include a machine that directly dispenses coins, cash, tokens, or anything else of value.

(2) "Game of chance" means the specific kind of game of chance commonly known as:

(a) "bingo" or "keno", in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random;

(b) "raffles", which are conducted by drawing for prizes.

(3) "Equipment" means:

(a) with respect to bingo or keno, the receptacle and numbered objects drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the boards or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address system, and all other articles essential to the operation, conduct, and playing of bingo or keno; or

(b) with respect to raffles, the implements, devices, and machines designed, intended, or used for the conduct of raffles and the identification of the winning number or unit and the ticket or other evidence of right to participate in raffles.

History: En. 62-716 by Sec. 2, Ch. 294, L. 1974; R.C.M. 1947, 62-716(part); amd. Sec. 1, Ch. 652, L. 1987.

Compiler's Comments

1987 Amendment: Inserted (1); and in (2)(a) and in two places in (3)(a), after "bingo", inserted "or keno".

23-5-403. Bingo and raffles exempt from prior law. Bingo and raffles as in this part authorized are exempt from the provisions of part 2 of this chapter.

History: En. 62-726 by Sec. 12, Ch. 294, L. 1974; R.C.M. 1947, 62-726.

23-5-404 through 23-5-410 reserved.

23-5-411. Bingo and raffles authorized. Conducting or participating in games of chance as defined in 23-5-402 and in accordance with the provisions of this part is lawful.

History: En. 62-715.1 by Sec. 7, Ch. 508, L. 1977; R.C.M. 1947, Sec. 62-715.1.

23-5-412. Bingo prizes. Bingo prizes may be paid in either tangible personal property or cash, except that a prize must be paid in tangible personal property if the game is played on a player-operated electronic video game machine. A prize may not exceed the value of $100 for each individual bingo award. The price for an individual bingo card may not exceed 50 cents.

It shall be unlawful to, in any manner, combine any awards so as to increase the ultimate value of such award.

History: **En. 62-716 by Sec. 2, Ch. 294, L. 1974; R.C.M. 1947, 62-716(part); amd. Sec. 1, Ch. 465, L. 1985.**

23-5-413. Raffle prizes restricted — exemption. (1) Raffle prizes must be in tangible personal property only and not in money, cash, stocks, bonds, evidences of indebtedness, or other intangible personal property and must not exceed the value of $1,000 for each individual raffle card. It shall be unlawful to, in any manner, combine any awards so as to increase the ultimate value of such award.

(2) (a) The restrictions of subsection (1) do not apply to a raffle conducted by a nonprofit corporation, religious corporation sole, or other nonprofit organization when the corporation or organization is licensed by the board of county commissioners to conduct the raffle. A separate license shall be required for each raffle conducted.

(b) The organization or corporation seeking the license under subsection (2)(a) must apply to the board of county commissioners for the license and must provide the following information:

(i) the cost and number of raffle tickets to be sold;

(ii) the charitable purposes the proceeds of the raffle are intended to benefit; and

(iii) the proposed prizes and their value.

(c) The proceeds from the sale of the raffle tickets are to be used only for charitable purposes or to pay for prizes. The raffle prize must be in tangible personal property only and not in money, cash, stock, bonds, evidence of indebtedness, or other intangible personal property. None of the proceeds may be used for the administrative cost of conducting the raffle.

(d) The corporation or organization conducting the raffle must submit an accounting to the board of county commissioners within 30 days following the completion of the raffle. The person or persons submitting the application to the board of county commissioners along with the corporation or organization conducting the raffle shall be responsible for submitting the accounting to the board of county commissioners.

History: **(1)En. 62-716 by Sec. 2, Ch. 294, L. 1974; R.C.M. 1947, 62-716(part); (2)En. Sec. 1, Ch. 510, L. 1981.**

23-5-414. *(Temporary)* **Restrictions on bingo, keno, and raffles — bingo or keno machines in establishment limit.** (1) In the playing of bingo or keno, no person who is not physically present on the premises where the game is actually conducted shall be allowed to participate as a player in the game.

(2) Raffles authorized by this part shall be restricted to events and participants within the geographic confines of the state of Montana.

(3) No establishment may receive licenses under 23-5-421 for or make available for play more than 40 bingo or keno machines.

23-5-414. *(Effective July 1, 1988)* **Restrictions on bingo, keno, and raffles — bingo or keno machines in establishment limit — hours of operation — exception.** (1) In the playing of bingo or keno, no person who is not physically present on the premises where the game is actually conducted shall be allowed to participate as a player in the game.

(2) Raffles authorized by this part shall be restricted to events and participants within the geographic confines of the state of Montana.

(3) No establishment may receive licenses under 23-5-421 for or make available for play more than 15 bingo or keno machines. A local governing body, however, may restrict the number of licensed machines available for play in an establishment to less than 15, but must allow at least 5.

(4) (a) Except as provided in subsection (4)(b), an establishment that receives a license to make a bingo or keno machine available for play must have the machine shut off each day during the hours provided in 16-3-304 for closure of licensed retail alcoholic beverage establishments.

(b) A local governing body may establish any hours of play for bingo or keno machines that it determines proper.

History: En. 62-717 by Sec. 3, Ch. 294, L. 1974; R.C.M. 1947, 62-717; amd. Secs. 2, 3, Ch. 652, L. 1987.

Compiler's Comments

1987 Amendment: In (1), after "bingo", inserted "or keno"; inserted (3); and in version effective July 1, 1988, inserted (4).

23-5-415. Time limitations on raffle drawing. No raffle drawing may be held or winner determined unless the chances to participate have been offered for sale for at least 30 days prior to the drawing. The drawing shall take place no later than 90 days after the first offering for sale of chances to participate.

History: En. 62-718 by Sec. 4, Ch. 294, L. 1974; R.C.M. 1947, 62-718.

23-5-416. Minors not to participate. No person under the age of 18 years shall be permitted to participate in any game or games of chance held, operated, or conducted pursuant to this part.

History: En. 62-721 by Sec. 7, Ch. 294, L. 1974; R.C.M. 1947, 62-721.

23-5-417. Gambling on cash basis. (1) In every game of chance the consideration paid for the chance to play shall be strictly cash. Every participant must present the money with which he intends to play the game at the time the game is played. No check, credit card, note, I O U, or other evidence of indebtedness shall be offered or accepted as part of the price of participation in such game or as payment of a debt incurred therein.

(2) No action based on such a debt is maintainable in a court of this state.

History: En. 62-724 by Sec. 10, Ch. 294, L. 1974; amd. Sec. 10, Ch. 508, L. 1977; R.C.M. 1947, 62-724.

23-5-418. Cheating unlawful. It shall be unlawful to conduct or participate in a game of chance authorized by this part in any manner which results in cheating, misrepresentation, or other such disreputable tactics which distract from a fair and equal chance for all participants or which otherwise affect the outcome of the game.

History: En. 62-725 by Sec. 11, Ch. 294, L. 1974; amd. Sec. 11, Ch. 508, L. 1977; R.C.M. 1947, 62-725.

23-5-419 and 23-5-420 reserved.

23-5-421. Issuance of licenses by local governing bodies. (1) Any city, town, or county may issue licenses for games of chance provided for in this part to be conducted on premises which have been licensed for the sale of liquor, beer, food, cigarettes, or any other consumable products. Within the cities or towns, such licenses may be issued by the city or town council or commission. Licenses for games conducted on premises outside the limits of any city or town may be issued by the county commissioners of the respective counties. When a license has been required by any city, town, or county, no game of chance as provided for in this part may be conducted on any premises which have been licensed for the sale of liquor, beer, food, cigarettes, or any other consumable product without such license having first been obtained.

(2) Any governing body may charge an annual license fee for each license so issued under this part, which license fee, if any, shall expire on June 30 of each year, and such fee shall be prorated.

(3) Any license issued pursuant to this part shall be considered to be a revocable privilege, and no holder thereof may acquire any vested rights therein or thereunder.

History: En. 62-719 by Sec. 5, Ch. 294, L. 1974; amd. Sec. 8, Ch. 508, L. 1977; R.C.M. 1947, 62-719.

Cross-References

No power in local government to regulate gambling unless delegated, 7-1-112.

23-5-422. Regulations of governing body. (1) The governing body authorized to issue gambling licenses pursuant to this part may establish by ordinance or resolution regulations governing the qualifications for the issuance, suspension, and revocation of such gambling licenses. These regulations, in addition to any other requirements, shall provide that no license may be issued to:

(a) a person who has been convicted of being the keeper or is keeping a house of prostitution;

(b) a person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality, under the laws of the federal government or any state of the United States;

(c) a person whose license issued under this part has been revoked for cause;

(d) a person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application;

(e) a person who is not a citizen of the United States and who has not been a resident of the state of Montana for at least 1 year immediately preceding the filing of the application for license;

(f) a person who is not the owner and operator of the business.

(2) Additional regulations may also be adopted for the purpose of the protection of the public health, welfare, and safety of the citizens of the state of Montana and to assure compliance with the intent of this part.

History: En. 62-720 by Sec. 6, Ch. 294, L. 1974; amd. Sec. 9, Ch. 508, L. 1977; R.C.M. 1947, 62-720.

Cross-References

No power in local government to regulate gambling unless delegated, 7-1-112.

23-5-423. Peace officers' responsibilities. It shall be the duty of all peace officers to enforce the provisions of this part and to arrest and complain against any person violating any provision of this part. It shall be the duty of the county attorney of the respective county to prosecute all violations of this part in the manner and form as is provided by law, and it shall be a misdemeanor for any such person or persons to knowingly fail to perform his or her duty under this section.

History: En. 62-722 by Sec. 8, Ch. 294, L. 1974; R.C.M. 1947, 62-722.

23-5-424 through 23-5-430 reserved.

23-5-431. Penalty. Every person who willfully violates or who procures, aids, or abets in the willful violation of this part or any ordinance, resolution, or regulation adopted pursuant thereto shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $1,000 or imprisonment in the county jail for not more than 3 months, or both.

History: En. 62-723 by Sec. 9, Ch. 294, L. 1974; R.C.M. 1947, 62-723.

Part 5

Sports Pools

23-5-501. Sports pool defined. "Sports pool" means a card divided into squares or spaces, with the names of the participants in the pool written within such squares or spaces, for which consideration in money is paid by the person playing for each square or space for the chance to win money or other items of value on any sports event wherein the participants in such sports event are natural persons or animals.

History: En. 62-727 by Sec. 1, Ch. 290, L. 1974; R.C.M. 1947, 62-727(part).

23-5-502. Sports pools authorized. Conducting or participating in sports pools as defined and governed in this part is lawful.

History: En. 62-727.1 by Sec. 12, Ch. 508, L. 1977; R.C.M. 1947, 62-727.1.

23-5-503. Rules. (1) The card used for recording the pool and upon which the squares or spaces appear shall clearly state in advance of the sale of any chances the number of chances to be sold in that specific pool, the name of the event, the consideration to be paid for each chance, and the total amount to be paid to the winners.

(2) No chance to participate in a sports pool may be sold other than upon the premises in which the sports pool is conducted. No individual chance to participate in a sports pool shall be sold for a consideration in excess of $1, and the total amount to be paid to the winners of any individual sports pool shall not exceed the value of $100. The winner of any sports pool shall receive a 100% payout of the value of the sports pool.

History: En. 62-727 by Sec. 1, Ch. 290, L. 1974; R.C.M. 1947, 62-727(part).

23-5-504. Transportation exempt from federal law. The transportation of sports pool cards is hereby declared exempt from the provisions of 15 U.S.C. 1172.

History: **En. 62-728 by Sec. 2, Ch. 290, L. 1974; R.C.M. 1947, 62-728.**

23-5-505. Gambling on cash basis. (1) In every sports pool the consideration paid for the chance to play shall be strictly cash. Every participant must present the money with which he intends to play at the time the pool is entered. No check, credit card, note, I O U, or other evidence of indebtedness shall be offered or accepted as part of the price of participating in a pool.

(2) No action based on a debt incurred in a sports pool is maintainable in a court of this state.

History: **En. 62-729 by Sec. 3, Ch. 290, L. 1974; amd. Sec. 13, Ch. 508, L. 1977; R.C.M. 1947, 62-729.**

23-5-506. Minors not to participate. No person under the age of 18 years may be permitted to participate in any sports pool held, operated, or conducted pursuant to this part.

History: **En. 62-730 by Sec. 4, Ch. 290, L. 1974; amd. Sec. 14, Ch. 508, L. 1977; R.C.M. 1947, 62-730.**

23-5-507. Cheating unlawful. It shall be unlawful to conduct or participate in a sports pool authorized by this part in any manner which results in cheating, misrepresentation, or other such disreputable tactics which distract from a fair and equal chance for all participants or which otherwise affects the outcome of the pool.

History: **En. 62-731 by Sec. 5, Ch. 290, L. 1974; amd. Sec. 15, Ch. 508, L. 1977; R.C.M. 1947, 62-731.**

23-5-508. Peace officers' responsibilities. It shall be the duty of all peace officers to enforce the provisions of this part and to arrest and complain against any person violating any provision of this part. It shall be the duty of the county attorney of the respective county to prosecute all violations of this part in the manner and form as is provided by law, and it shall be a misdemeanor for any such person or persons to knowingly fail to perform his or her duty under this section.

History: **En. 62-732 by Sec. 6, Ch. 290, L. 1974; R.C.M. 1947, 62-732.**

23-5-509. Penalty. Every person who willfully violates or who procures, aids, or abets in the willful violation of this part shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $1,000 or imprisonment in the county jail for not more than 3 months, or both.

History: **En. 62-733 by Sec. 7, Ch. 290, L. 1974; R.C.M. 1947, 62-733.**

23-5-510. Jurisdiction. Jurisdiction for all violations of this part is in the district court.

History: **En. 62-735 by Sec. 9, Ch. 290, L. 1974; amd. Sec. 16, Ch. 508, L. 1977; R.C.M. 1947, 62-735.**

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

23-5-511. Prior law still in effect. To the extent that they are not specifically superseded by the provisions of this part or any other gambling law, the provisions of part 1 of this chapter remain in effect.

History: **En. 62-734 by Sec. 8, Ch. 290, L. 1974; R.C.M. 1947, 62-734.**

Part 6

Video Draw Poker and Keno Machines

Part Cross-References

Slot machines, 23-5-104.

23-5-601. Short title. This part shall be known and may be cited as the "Video Draw Poker Machine Control Law of 1985".

History: **En. Sec. 1, Ch. 720, L. 1985.**

23-5-602. Definitions. As used in this part, the following definitions apply:

(1) "Associated equipment" means all proprietary devices, machines, or parts used in the manufacture or maintenance of a video draw poker machine, including but not limited to integrated circuit chips, printed wired assembly, printed wired boards, printing mechanisms, video display monitors, and metering devices.

(2) "Department" means the department of commerce.

(3) "Keno machine" means an electronic video game machine that, upon insertion of cash, is available to play or simulate the play of the game of keno or bingo as provided in part 4 of this chapter, utilizing a video display and microprocessors, in which by the skill of the player or by chance, or both, the player may receive free games or credits that can be redeemed for cash. The term does not include a machine that directly dispenses coins, cash, tokens, or anything else of value.

(4) "Licensed establishment" means:

(a) with respect to the licensure of keno machines, an establishment that is licensed to sell alcoholic beverages for consumption on the premises or an establishment licensed under 23-5-421; and

(b) with respect to the licensure of video draw poker machines, an establishment that is licensed to sell alcoholic beverages for consumption on the premises.

(5) "Licensee" means an individual, partnership, corporation, or association that has been issued a license by the department for the placement and operation of video draw poker machines or keno machines in the licensed establishment of the individual, partnership, corporation, or association.

(6) "Manufacturer-distributor" means an individual, partnership, corporation, or association that assembles, produces, and makes or supplies video draw poker machines or associated equipment for sale, use, or distribution in this state.

(7) "Net machine income" means money put into a video draw poker or keno machine minus credits paid out in cash.

(8) "Used keno machine" means a keno machine, as that term is defined in this section, that is owned or possessed by an applicant on the day he

applies for a license for the used machine and that was owned or operated in the state prior to June 30, 1987.

(9) "Used video draw poker machine" means a video draw poker machine, as that term is defined in this section, which is owned or possessed by an applicant on the day he applies for a license for the used machine and which was owned or operated in the state prior to February 3, 1984.

(10) "Video draw poker machine" means an electronic video game machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker, as provided in this part, utilizing a video display and microprocessors in which, by the skill of the player or by chance, or both, the player may receive free games or credits that can be redeemed for cash. The term does not include a machine that directly dispenses coins, cash, tokens, or anything else of value.

History: **En. Sec. 2, Ch. 720, L. 1985; amd. Sec. 1, Ch. 154, L. 1987; amd. Sec. 1, Ch. 317, L. 1987; amd. Sec. 1, Ch. 603, L. 1987.**

Compiler's Comments

1987 Amendments: Chapter 154 in (2) changed "department of revenue" to "department of commerce".

Chapter 317 inserted (1); in (5), in two places, inserted "or association"; and inserted (6).

Chapter 603 inserted (3); at beginning of (4)(a) inserted "with respect to the licensure of keno machines" and at end inserted "or an establishment licensed under 23-5-421"; inserted (4)(b); in (5), after "poker machines", inserted "or keno machines"; and inserted (7) and (8).

Cross-References

Liquor licensing criteria, Title 16, ch. 4, part 4.

23-5-603. *(Temporary)* **Video draw poker or keno machines — possession — play — restriction.** No person may place an electronic video game machine that simulates or offers a game of poker, bingo, or keno in his licensed establishment unless he is licensed under 23-5-612. Machines licensed under 23-5-612 are legal, and it is legal to play such machines, except that a person under the age of 18 years may not play a video draw poker or keno machine. The provisions of part 3 of this chapter do not apply to or prohibit video draw poker or keno machines or the playing of such machines.

23-5-603. *(Effective July 1, 1988)* **Video draw poker or keno machines — possession — play — hours of play — restriction.** (1) No person may place an electronic video game machine that simulates or offers a game of poker, bingo, or keno in his licensed establishment unless he is licensed under 23-5-612. Machines licensed under 23-5-612 are legal, and it is legal to play such machines, except that a person under the age of 18 years may not play a video draw poker or keno machine.

(2) Except as provided in subsection (3), an establishment that receives a license to make a video draw poker machine available for play must have the machine shut off each day during the hours provided in 16-3-304 for closure of licensed retail alcoholic beverage establishments.

(3) A local governing body may establish any hours of play for video draw poker machines that it determines proper.

(4) The provisions of part 3 of this chapter do not apply to or prohibit video draw poker or keno machines or the playing of such machines.

History: **En. Sec. 9, Ch. 720, L. 1985; amd. Sec. 2, Ch. 603, L. 1987; amd. Sec. 4, Ch. 652, L. 1987.**

Compiler's Comments

1987 Amendments: Chapter 603 in temporary version in first sentence, after "poker", inserted "bingo, or keno" and in second and third sentences, after "poker", inserted "or keno". Chapter 603 in version effective July 1, 1988, in (1) in first sentence, after "poker", inserted "bingo, or keno" and in second sentence, after "poker", inserted "or keno"; and in (4), after "poker", inserted "or keno".

Chapter 652 in version effective July 1, 1988, inserted (2) and (3).

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

23-5-604 reserved.

23-5-605. Powers and duties of the department — licensing. (1) The department shall administer the provisions of this part, except 23-5-615.

(2) The department shall adopt rules implementing this part, except 23-5-615, and:

(a) with respect to state licenses:

(i) provide licensing procedures;

(ii) prescribe necessary application forms; and

(iii) grant or deny license applications;

(b) with respect to the video draw poker and keno machine net income tax:

(i) prescribe recordkeeping requirements for licensees;

(ii) provide a procedure for inspection of records;

(iii) provide a method for collection of the tax; and

(iv) establish penalties for the delinquent reporting and payment of the required tax.

(3) The department may not suspend, revoke, deny, or place a condition on a license except for reasonable cause. Reasonable cause includes but is not limited to conviction of a violation of a local government gambling ordinance.

(4) The department is a criminal justice agency, and designated employees and duly authorized department representatives are granted peace officer status with powers of search, seizure, and arrest to regulate and control those persons licensed under this part, except 23-5-615.

History: En. Sec. 7, Ch. 720, L. 1985; amd. Sec. 1, Ch. 211, L. 1987; amd. Sec. 3, Ch. 603, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 211 in (3) substituted present language for: "The department may not deny or place a condition on a license except for reasonable cause"; and in (4), after "employees", inserted "and duly authorized department representatives".

Chapter 603 inserted (2)(b).

Cross-References

Definition of "peace officer" as used in MCA, 1-1-207.

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

Enforcement of Alcoholic Beverage Code, 16-6-102 through 16-6-107.

"Peace officer" defined, 46-1-201.

23-5-606. Description and specifications. Each video draw poker machine must:

(1) be inspected in the state of Montana for certification and licensure by the department;

(2) be connected with a system consisting of player-operated terminals. The terminals must be intelligent devices operated by the players in the manner specified in this part.

(3) not have any switches, jumpers, wire posts, or any other means of manipulation that could affect the operation or outcome of a game;

(4) offer only the game of draw poker and have the following method of operation:

(a) the cards must be shuffled after each hand of poker is dealt;

(b) the game must have one memory location for each card in the deck. The deck must be shuffled by use of a random number generator to exchange each card in the deck with another randomly selected card.

(c) after shuffling, five cards must be dealt from the top of the deck;

(d) any discarded cards must be replaced by remaining cards in the deck, starting with the sixth card and using the cards in the order of the deck;

(e) after the first five cards of a hand have been dealt, the player may be allowed to raise his wager up to the amount of his initial ante, not to exceed eight quarters;

(f) each quarter must represent one credit;

(g) the game must display the hands for which free games or credits will be awarded and the number of free games or credits for each hand;

(h) the machine must have doors to two locking areas, one area containing the logic board and software for the game draw poker and the other housing the cash compartment and mechanical meters. These areas must be locking and separated. Access to one from the other must not be allowed at any time.

(i) (i) the machine must have two mechanisms, hereinafter referred to as "mechanism 1" and "mechanism 2", that accept quarters;

(ii) the machine may have a mechanism that accepts cash in the form of bills not to exceed $5;

(j) the machine must use a color display with images of cards that closely resemble standard poker playing cards;

(k) the machine must be capable of printing a ticket voucher for the player at the completion of each game. If credits are owed the player, a valid ticket must contain:

(i) the name of the licensed establishment;

(ii) the name of the city, town, or county in which the licensed establishment is located;

(iii) the value of the prize in numbers;

(iv) the value of the prize in words;

(v) the time of day, in hours and minutes in a 24-hour format;

(vi) the date;

(vii) the machine license number or serial number up to eight digits;

(viii) the sequential number of the ticket voucher; and

(ix) an encrypted validation number from which the validity of the prize can be determined;

(l) an exact copy of each printed ticket voucher must be printed and retained within the machine;

(m) the machine must have nonresettable mechanical meters housed in a readily accessible area that keep a permanent record of:

(i) total coins accepted by both coin acceptors;

(ii) total credits in the bill acceptor if the machine has a bill acceptor;

(iii) credits played by player;

(iv) credits won by player; and

(v) credits printed out by the ticket voucher printer;

(n) the machine must contain electronic metering, using meters that record the following and display them on the video screen:

(i) total coins in mechanism 1, total coins in mechanism 2, and total coins in mechanisms 1 and 2 combined;

(ii) if the machine has a bill acceptor, it must contain electronic metering using meters that record total coins in mechanisms 1 and 2 combined and total credits in the bill acceptor;

(iii) total credits, total credits played, and total credits won;

(iv) total hands of poker played and total hands of poker won;

(v) total winning hands, consisting of a pair, two pair, three of a kind, a straight, a flush, a full house, four of a kind, a straight flush, or five of a kind;

(vi) total errors from the logic board random access memory; and

(vii) total examination of electronic meters;

(o) the machine may not have any functions or parameters adjustable by or through any separate video display or input codes, except for the adjustment of features that are wholly cosmetic;

(p) the machine must issue, by activation of an external switch, an accounting ticket containing a performance synopsis of the machine. The ticket must contain:

(i) the name of the licensed establishment;

(ii) the name of the city, town, or county in which the licensed establishment is located;

(iii) the license number of the machine;

(iv) the time of day, in hours and minutes in a 24-hour format;

(v) the date; and

(vi) the electronic meter readings required by subsection (4)(n); and

(5) have a serial number or other identification number permanently affixed to the machine by the manufacturer.

History: En. Sec. 3, Ch. 720, L. 1985; amd. Sec. 2, Ch. 211, L. 1987; amd. Sec. 1, Ch. 640, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 211 in (4)(k), near beginning of second sentence, inserted "a valid" before "ticket"; in (4)(m), near beginning, substituted "a readily accessible area" for "the cash compartment"; inserted (5); and made minor change in phraseology.

Chapter 640 inserted (4)(f) and (4)(i)(ii); in (4)(m) substituted present (i) for "coins accepted by each coin acceptor"; inserted (4)(m)(ii) and (4)(n)(ii); and in (4)(p)(vi) changed reference to subsection (4)(m) to reference to subsection (4)(n).

23-5-607. Expected payback — verification. The department shall prescribe the expected payback value of one credit played to be at least 80% of the value of a credit. Each video draw poker or keno machine must have an electronic accounting device that the department may use to verify the winning percentage. The department may not publish or otherwise disseminate income figures and other statistics obtained in the payback verification process or contained in payback verification reports in a manner that allows or helps a person to identify a particular machine or to match a particular machine with a particular income or statistic.

History: En. Sec. 4, Ch. 720, L. 1985; amd. Sec. 1, Ch. 163, L. 1987; amd. Sec. 4, Ch. 603, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 163 inserted last sentence concerning confidentiality.

Chapter 603 near beginning of second sentence, before "machine", inserted "video draw poker or keno".

23-5-608. Limitation on amount of money played and value of prizes — payment of credits in cash. (1) A video draw poker or keno machine may not allow more than $2 to be played on a game or award free games or credits in excess of the value of $100 per hand.

(2) Each licensee shall pay in cash all credits owed to a player as shown on a valid ticket voucher provided in 23-5-606(4)(k).

History: En. Sec. 5, Ch. 720, L. 1985; amd. Sec. 3, Ch. 211, L. 1987; amd. Sec. 5, Ch. 603, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 211 inserted (2). (Chapter 640, L. 1987, inserted subsection (4)(f) of 23-5-606. The Code Commissioner has corrected the reference in (2) to reflect this insertion.)

Chapter 603 in (1), before "machine", inserted "video draw poker or keno".

23-5-609. Keno machine specifications. Each keno machine must:

(1) be inspected in the state of Montana for certification and licensure by the department;

(2) be connected with a system consisting of player-operated terminals. The terminals must be intelligent devices operated by the players in the manner specified in this part.

(3) not have any switches, jumpers, wire posts, or any other means of manipulation that could affect the operation or outcome of a game; and

(4) offer only the game of keno and have the following method of operation:

(a) the numbers must be mixed after each game is played;

(b) the game must have one memory location for each number. The numbers must be mixed by use of a random number generator.

(c) each game must have a field of numbers from 1 to 75 or 1 to 80 for each game of keno or bingo that is played. There must be at least 20 numbers drawn in each game.

(d) the game must display the number of spaces picked for which free games or credits will be awarded and the number of free games or credits for each game;

(e) the machine must have doors to two or more locking areas, one area containing the logic board and software for the game of keno and the others housing the cash compartment and mechanical meters. These areas must be locking and separated. Access to one from the other must not be allowed at any time.

(f) the machine must have two mechanisms, hereinafter referred to as "mechanism 1" and "mechanism 2", that accept quarters. The machine may have a mechanism that accepts cash in the form of bills not to exceed $5.

(g) each quarter must represent one credit;

(h) the game must display the combinations for which free games or credits will be awarded and the number of free games or credits for each combination;

(i) the machine must be capable of printing a ticket voucher for the player at the completion of each game. If credits are owed the player, the ticket must contain:

(i) the name of the licensed establishment;

(ii) the name of the city, town, or county in which the licensed establishment is located;

(iii) the value of the prize in numbers;

(iv) the value of the prize in words;

(v) the time of day, in hours and minutes in a 24-hour format;

(vi) the date;

(vii) the machine license number or serial number up to eight digits;

(viii) the sequential number of the ticket voucher; and

(ix) an encrypted validation number from which the validity of the prize can be determined;

(j) an exact copy of each printed ticket voucher must be printed and retained within the machine;

(k) the machine must have nonresettable mechanical meters housed in the cash compartment that keep a permanent record of:

(i) total coins accepted by both coin acceptors;

(ii) credits played by player;

(iii) credits won by player; and

(iv) credits printed out by the ticket voucher printer;

(l) the machine must contain electronic metering, using meters that record the following and display them on the video screen:

(i) total coins in mechanism 1, total coins in mechanism 2, and total coins in mechanisms 1 and 2 combined;

(ii) if the machine has a bill acceptor, it must contain electronic metering using meters that record total coins in mechanisms 1 and 2 combined and total credits in the bill acceptor;

(iii) total credits, total credits played, and total credits won;

(iv) total games of keno played and total games of keno won;

(v) total errors from the logic board random access memory; and

(vi) total examination of electronic meters;

(m) the machine may not have any functions or parameters adjustable by or through any separate video display or input codes, except for the adjustment of features that are wholly cosmetic;

(n) the machine must issue, by activation of an external switch, an accounting ticket containing a performance synopsis of the machine. The ticket must contain:

(i) the name of the licensed establishment;

(ii) the name of the city, town, or county in which the licensed establishment is located;

(iii) the license number of the machine;

(iv) the time of day, in hours and minutes in a 24-hour format;

(v) the date; and

(vi) the electronic meter readings required by subsection (4)(l).

History: En. Sec. 8, Ch. 603, L. 1987.

Compiler's Comments

Code Commissioner Correction: Subsection (4)(k)(ii) of sec. 8, Ch. 603, L. 1987 (codified as 23-5-609), provided: "(ii) the machine may have a mechanism that accepts cash in the form of bills". Because the language was redundant with the second sentence of (4)(f) and because it was not in proper outline form as (4)(k)(ii), the subsection was not codified.

23-5-610. Video draw poker and keno machine net income tax — records — distribution — quarterly statement and payment. (1) Each licensee shall pay to the department a video draw poker and keno machine tax of 15% of net machine income from each video draw poker and keno machine licensed under this part.

(2) Each licensee shall keep a record of net machine income in such form as the department may require. The records must at all times during the business hours of the licensee be subject to inspection by the department, its agents, or employees.

(3) Each licensee shall, within 15 days after the end of each quarter, complete and deliver to the department a statement showing the total net machine income from each video draw poker and keno machine licensed to him, together with the total amount due the state as video draw poker and keno machine net income tax for the preceding quarter. The statement must contain such other information as the department may require.

(4) (a) The department must deposit one-third of the tax collected under subsection (3) in the general fund.

(b) The department must forward the remaining two-thirds of the tax collected under subsection (3) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video draw poker and keno machines located in cities and towns. The two-thirds local government portion of tax collected under subsection (3) is statutorily appropriated to the department as provided in 17-7-502 for deposit to the county or municipal treasury.

History: En. Sec. 9, Ch. 603, L. 1987.

23-5-611. State license qualifications — limitations — right to hearing. (1) (a) A person who has been granted a license under 16-4-401(2) to sell alcoholic beverages for consumption on the premises may be granted a license for the placement of video draw poker machines in his licensed establishment.

(b) Each applicant for a license shall on the application form disclose to the department any previous experience or involvement as an owner or operator of gambling devices and establishments. Previous experience or involvement includes:

(i) controlling of gambling devices as an owner or operator;

(ii) employment with the owner or operator of gambling devices;

(iii) employment in establishments where gambling is offered to the public; and

(iv) conviction of violation of state or local gambling laws in any jurisdiction.

(2) A licensee may not have on the premises or make available for play on the premises of his licensed establishment more than five machines.

(3) A person denied a state license has the right to a hearing before the department. The hearing must be conducted in accordance with the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 8, Ch. 720, L. 1985; amd. Sec. 4, Ch. 211, L. 1987.

Compiler's Comments

1987 Amendment: Inserted (1)(b).

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

Liquor licensing criteria, Title 16, ch. 4, part 4.

23-5-612. State license — fee — used keno machines. (1) (a) The department, upon payment of the fee provided in subsection (1)(b) and in conformance with rules adopted under 23-5-605, shall issue to the licensee a license for each video draw poker or keno machine.

(b) The department shall charge an annual license fee of $100 for each video draw poker machine and $100 for each keno machine. The department shall retain $100 of the total license fee collected for purposes of administering this part, except 23-5-615. The license expires on June 30 of each year.

(2) A used keno machine may be licensed under subsection (1) without meeting the requirements of 23-5-609 if the applicant for licensure can establish to the satisfaction of the department that, on the date of application, he owns or possesses a machine that was owned or operated in the state prior to June 30, 1987. A license issued under this subsection expires for all purposes no later than June 30, 1989.

History: En. Secs. 10, 12, Ch. 720, L. 1985; amd. Sec. 2, Ch. 154, L. 1987; amd. Sec. 6, Ch. 603, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 154 in (1)(a) changed "department of revenue" to "department"; and in (1)(b), near middle of second sentence after "collected", deleted "in fiscal years 1986 and 1987 and shall retain 3% thereafter", but see Ch. 603 amendment.

Chapter 603 near end of (1)(a), after "poker", inserted "or keno"; in (1)(b) reduced fee to $100 from $1,500 for each video draw poker machine, inserted $100 license fee for each keno machine, and substituted last two sentences for former language that read: "The department shall retain 5% of the total license fee collected in fiscal years 1986 and 1987 and shall retain 3% thereafter for purposes of administering this part, except 23-5-615. The department shall deposit one-third of the remaining fee in the state general fund and forward two-thirds of the remaining fee to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from fees on licensed machines located in cities and towns. The license expires on June 30 of each year, and the fee is prorated. The two-thirds portion of the annual fee is statutorily appropriated to the department as provided in 17-7-502 for deposit to the county or municipal treasury"; and inserted (2).

23-5-613. Investigations and violations. (1) The department or duly authorized department representatives shall make necessary investigations, suspend or revoke state licenses for violations of this part, except 23-5-615, and hold hearings on such matters. A license may be suspended prior to a hearing upon a finding of danger to public health and welfare but may not be revoked until the hearing is completed.

(2) A violation of this part, except 23-5-615, or a rule promulgated under 23-5-605 is a criminal offense, and a fine not to exceed $10,000 for the first violation and $15,000 for a subsequent violation must be imposed.

(3) If a video draw poker machine is operated in violation of this part, except 23-5-615, it may be seized under 23-5-121 and the provisions of 23-5-122 apply.

(4) Employees of the department or duly authorized department representatives designated as enforcement agents may investigate the background of license applicants to the extent judged necessary by the department, but no person may be investigated prior to his submission of an application for a license.

(5) (a) Findings of suspected illegal activity must be reported to the appropriate law enforcement agency.

(b) The clerk of the court shall, upon final judgment of conviction of a licensee, report to the department the name of the licensee convicted of violating a local gambling ordinance.

(c) On receipt of such report, the department may commence proceedings to revoke or suspend the licensee's video draw poker license.

(6) Any peace officer of this state may arrest a person for tampering with a video draw poker machine, attempting or conspiring to manipulate the outcome or the payoff of a video draw poker machine, or manipulating the outcome or payoff of a video draw poker machine by physical tampering or other interference with the proper functioning of the machine.

History: **En. Sec. 11, Ch. 720, L. 1985; amd. Sec. 5, Ch. 211, L. 1987.**

Compiler's Comments

1987 Amendment: Near beginning of (1) and (4), after "department", inserted "or duly authorized department representatives"; and inserted (5)(b) and (5)(c).

Cross-References

Definition of "peace officer" as used in MCA, 1-1-207.

"Knowingly", "negligently", and "purposely" defined, 45-2-101.

Absolute liability, 45-2-104.

"Peace officer" defined, 46-1-201.

23-5-614 reserved.

23-5-615. Licensing by local governing bodies. (1) Any city, town, or county governing body may issue to a person who meets the qualifications of 23-5-611 a license for each video draw poker machine to be used on the premises of a licensed establishment. A machine may be licensed by a city or town if located in the city or town or by the county if the machine is not located in a city or town.

(2) In addition to the license fee paid under 23-5-612, a governing body may charge an annual license fee for each license issued under this section. The license expires on June 30 of each year, and the fee must be prorated.

(3) Such license fee may not exceed $100.

History: **En. Sec. 6, Ch. 720, L. 1985; amd. Sec. 7, Ch. 603, L. 1987.**

Compiler's Comments

1987 Amendment: In (3) reduced maximum license fee from $1,000 to $100.

Cross-References

Specific delegation of power of local government with self-government powers to regulate gambling, 7-1-112.

23-5-616. Removal of machine from public access. If a machine fails to meet the specifications and requirements of 23-5-606, 23-5-607, or 23-5-608 at any time after initial licensure, the licensee shall immediately remove the machine from public access until it meets all requirements.

History: **En. Sec. 6, Ch. 211, L. 1987.**

23-5-617. Penalties — hearing. If the department determines after a hearing conducted pursuant to the Montana Administrative Procedure Act that a person licensed under this part has violated any of the provisions of this part or the department's rules, the department may, in addition to the other penalties prescribed:

(1) suspend the license for a period of not more than 180 days;

(2) impose a civil penalty not to exceed $6,000;

(3) revoke the license;

(4) deny renewal of the license on expiration thereof; or

(5) impose a combination of any two of the penalties set forth in subsections (1) through (4).

History: **En. Sec. 7, Ch. 211, L. 1987.**

23-5-618. Judicial review of agency decision. (1) Any interested party has the right to judicial review of a final decision of the department concerning the grant, denial, renewal, revocation, or suspension of a license required under this part.

(2) A petition for judicial review must conform to the provisions of Title 2, chapter 4, part 7.

History: **En. Sec. 8, Ch. 211, L. 1987.**

23-5-619 through 23-5-624 reserved.

23-5-625. Manufacturer-distributor of video draw poker machines — license — fees. (1) It is unlawful for any person to manufacture, sell, or distribute any video draw poker machine or associated equipment for use or play in this state without having first been issued a manufacturer-distributor's license by the department.

(2) The department shall charge an annual license fee of $1,000 for the issuance or renewal of a manufacturer-distributor's license.

(3) In addition to other license fees, the department may charge the applicant a one-time manufacturer-distributor's license application processing fee. The processing fee may not exceed the department's actual costs for processing an application.

(4) All manufacturer-distributor's licenses expire on June 30 of each year, and the license fee may not be prorated.

(5) The department shall retain the license and processing fees collected for purposes of administering this part, except 23-5-615.

History: **En. Sec. 2, Ch. 317, L. 1987.**

23-5-626. License qualifications — investigation — right to hearing. (1) An applicant for issuance or renewal of a manufacturer-distributor's license shall:

(a) apply to the department on forms prescribed by the department;

(b) establish to the satisfaction of the department that the applicant's past record and present status as a manufacturer-distributor of video draw poker machines or associated equipment and as a business person and citizen demonstrate that the applicant is likely to conduct his business in compliance with all laws.

(2) A person denied a manufacturer's or distributor's license has the right to a hearing before the department. The hearing must be conducted in accordance with the provisions of the Montana Administrative Procedure Act.

History: **En. Sec. 3, Ch. 317, L. 1987.**

Cross-References

Beer and wine licenses — licensing criteria, Title 16, ch. 4, part 4.

Proof of character and capacity to comply with law, 16-4-401.

Corporate authorization to do business in Montana, 35-1-203, 35-1-1001.

23-5-627. Determination of unsuitability for licensure — effect. (1) If the department determines that a manufacturer-distributor is unsuitable for issuance of a license or if a previously issued license is revoked:

(a) the department may not approve any new video draw poker machine or associated equipment produced by the manufacturer-distributor;

(b) the department may revoke a license for a machine produced by that manufacturer-distributor and owned by a person in the state of Montana at the time of revocation of the manufacturer-distributor's licensure only if, after a reasonable length of time, the machine remains out of compliance with state requirements; and

(c) a manufacturer-distributor may not sell, transfer, or offer for use or play in this state any new video draw poker machine or associated equipment.

(2) Any association or agreement between the manufacturer-distributor and a licensee is considered to include a provision for its termination without liability on the part of the licensee upon a determination by the department that the manufacturer-distributor is unsuitable for licensure. Failure to include such provisions for termination in an agreement is not a defense in any action brought under the provisions of this section to terminate the agreement.

(3) Failure of a licensee to terminate any association or agreement with a manufacturer-distributor after receiving notice of the department's determination of unsuitability for licensure constitutes grounds for revocation of the licensee's video draw poker machine licenses.

History: En. Sec. 4, Ch. 317, L. 1987.

23-5-628 through 23-5-630 reserved.

23-5-631. Examination and approval of new video draw poker machines and associated equipment — fee. (1) The department shall examine and approve new video draw poker machines and associated equipment which is manufactured, sold, or distributed for use in this state before the video draw poker machine or associated equipment is played or used.

(2) A video draw poker machine or associated equipment may not be examined or approved by the department until the manufacturer-distributor of the machine or associated equipment is licensed as required in 23-5-625.

(3) The department shall require the manufacturer-distributor seeking the examination and approval of a new video draw poker machine or associated equipment to pay the anticipated actual costs of the examination in advance and, after the completion of the examination, shall refund overpayments or charge and collect amounts sufficient to reimburse the department for underpayments of actual costs.

History: En. Sec. 6, Ch. 317, L. 1987.

23-5-632 through 23-5-634 reserved.

23-5-635. Penalties — hearing. If the department finds, after a hearing conducted pursuant to the Montana Administrative Procedure Act, that a person licensed under this part has violated any of the provisions of this part or the department's rules, the department may, in addition to the other penalties prescribed:

(1) suspend the license for a period of not more than 180 days;

(2) impose a civil penalty not to exceed $6,000;

(3) revoke the license;

(4) deny renewal of the license on expiration thereof; or

(5) impose a combination of any two of the penalties set forth in subsections (1) through (4).
History: **En. Sec. 5, Ch. 317, L. 1987.**

23-5-636. Judicial review of agency decision. (1) Any interested party has the right to judicial review of a final decision of the department concerning the grant, denial, renewal, revocation, or suspension of a license required under this part.

(2) A petition for judicial review must conform to the provisions of Title 2, chapter 4, part 7.
History: **En. Sec. 7, Ch. 317, L. 1987.**

Parts 7 through 9 reserved

Part 10

State Lottery

23-5-1001. Short title. This part may be cited as the "Montana State Lottery Act of 1985".
History: **En. Sec. 1, Ch. 669, L. 1985.**

23-5-1002. Purpose. (1) The purpose of this part is to allow lottery games in which the player purchases from the state, through the administrators of the state lottery, a chance to win a prize. This part does not allow and may not be construed to allow any game in which a player competes against or plays with any other person, including a person employed by an establishment in which a lottery game may be played.

(2) The administration and construction of this part must comply with Article III, section 9, of the Montana constitution, which mandates that all forms of gambling are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum. Therefore, this part must be strictly construed to allow only those games that are within the scope of this section and within the definition of "lottery game".

(3) The state lottery may not:

(a) operate a slot machine or carry on any form of gambling prohibited by the laws of this state; or

(b) carry on any form of gambling permitted by the laws of this state but which is not a lottery game within the scope of this section and within the definition of "lottery game".
History: **En. Sec. 2, Ch. 669, L. 1985.**

23-5-1003. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the state lottery commission created by 23-5-1006.

(2) "Director" means the director appointed by the governor under 23-5-1011 to administer and manage the state lottery.

(3) "Lottery" or "state lottery" means the Montana state lottery created and operated pursuant to this part.

(4) "Lottery game" means any procedure, including any on-line or other procedure using a machine or electronic device, by which one or more prizes are distributed among persons who have paid for a chance to win a prize and includes but is not limited to weekly (or other, longer time period) winner games, instant winner games, daily numbers games, and sports pool games, except games prohibited by Title 23, chapter 5, part 1; lotteries prohibited by Title 23, chapter 5, part 2; card games regulated by Title 23, chapter 5, part 3; raffles and bingo games governed by Title 23, chapter 5, part 4; and sports pools governed by Title 23, chapter 5, part 5.

History: **En. Sec. 3, Ch. 669, L. 1985.**

23-5-1004 and 23-5-1005 reserved.

23-5-1006. State lottery commission — allocation — composition — compensation — quorum. (1) There is a state lottery commission.

(2) The commission consists of five members, who shall reside in Montana, appointed by the governor.

(3) At least one commissioner must have 5 years of experience as a law enforcement officer. At least one commissioner must be an attorney admitted to the practice of law in Montana. At least one commissioner must be a certified public accountant licensed in Montana.

(4) After initial appointments, each commissioner shall be appointed to a 4-year term of office, and the terms shall be staggered.

(5) A commissioner may be removed by the governor for good cause. An office that for any reason becomes vacant must be filled within 30 days by the governor, and the commissioner filling the vacancy shall serve for the rest of the unexpired term.

(6) The commission shall elect one of its members as chairman.

(7) Three or more commissioners constitute a quorum to do business, and action may be taken by a majority of a quorum.

(8) Commissioners are entitled to compensation, to be paid out of the state lottery fund, at the rate of $50 for each day in which they are engaged in the performance of their duties and are entitled to travel, meals, and lodging expenses, to be paid out of the state lottery fund, as provided for in Title 2, chapter 18, part 5.

(9) The commission is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

History: **En. Sec. 4, Ch. 669, L. 1985.**

23-5-1007. Powers and duties of commission. The commission shall:

(1) establish and operate a state lottery and may not become involved in any other gambling or gaming;

(2) determine policies for the operation of the state lottery, supervise the director and his staff, and meet with the director at least once every 3 months to make and consider recommendations, set policies, determine types and forms of lottery games to be operated by the state lottery, and transact other necessary business;

(3) determine the price of each ticket or chance and the number and size of prizes;

(4) provide for the conduct of drawings of winners of lottery games;

(5) carry out, with the director, a continuing study of the state lotteries of Montana and other states to make the state lottery more efficient, profitable, and secure from violations of the law;

(6) study and may enter into agreements with other lottery states to offer regional lottery games;

(7) prepare quarterly and annual reports on all aspects of the operation of the state lottery, including but not limited to types of games, gross revenue, prize money paid, operating expenses, net revenue to the state, contracts with gaming suppliers, and recommendations for changes to this part, and deliver a copy of each report to the governor, the department of administration, the legislative auditor, the president of the senate, the speaker of the house of representatives, and each member of the appropriate committee of each house of the legislature as determined by the president of the senate and the speaker of the house; and

(8) adopt rules necessary to carry out this part.

History: **En. Sec. 5, Ch. 669, L. 1985; amd. Sec. 1, Ch. 161, L. 1987.**

Compiler's Comments

1987 Amendment: In (6), after "study", deleted "the possibility of working" and inserted "and may enter into agreements".

23-5-1008. Legislative liaison committee — bipartisan — compensation from lottery fund. (1) There is a legislative liaison committee.

(2) The liaison committee consists of four legislators. Two members must be from the senate and two members must be from the house of representatives. The speaker of the house and the senate committee on committees shall appoint the members of the liaison committee, and no more than two members may be of the same political party. No legislator who has any ownership interest in any gambling device or establishment may be appointed to the liaison committee.

(3) A member of the liaison committee is entitled to compensation and expenses as provided in 5-2-302, paid from any money in the allocation under 23-5-1027(2), while performing his duties as a member of the liaison committee, as provided in subsection (4) of this section.

(4) The liaison committee shall meet once each fiscal year with the commission at Helena and shall report to each legislature on the activities and operations of the state lottery.

History: **En. Sec. 2, Ch. 161, L. 1987.**

23-5-1009 and 23-5-1010 reserved.

23-5-1011. Director — appointment — compensation — qualifications. (1) The director must be appointed by the governor and shall hold office at the pleasure of the governor.

(2) The director must be qualified by training and experience to direct the state lottery. He must be a full-time employee and may not engage in any other occupation.

(3) The director's salary is equal to 90% of the salary of the director of the department of commerce.

History: **En. Sec. 6, Ch. 669, L. 1985.**

23-5-1012. Powers and duties of director. (1) The director shall:

(a) administer the operation of the state lottery in accordance with this part and the rules and other directives of the commission;

(b) appoint an assistant director for security and employ and direct personnel necessary to the operation of the state lottery;

(c) license lottery ticket or chance sales agents and suspend or revoke licenses pursuant to this part and commission rules; and

(d) maintain, with the assistant director for security, the security of the state lottery.

(2) With the concurrence of the commission or pursuant to commission rules, the director may enter into contracts for materials, equipment, and supplies to be used in the operation of the state lottery, for the design and installation of games, for consultant services, and for promotion of the lottery. All contracts must be made in accordance with state law. No contract is legal or enforceable that provides for the management of the state lottery or for the entire operation of its games by any private person or firm. When a contract is awarded, a performance bond satisfactory to the commission and executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the commission, in an amount equal to the price of the contract, must be delivered to the commission.

History: **En. Sec. 7, Ch. 669, L. 1985.**

23-5-1013. Assistant director for security — qualifications — duties — compensation. (1) The director shall appoint an assistant director for security, who serves at the pleasure of the director.

(2) The assistant director for security must be qualified by training and experience, have at least 5 years of law enforcement experience, and be knowledgeable and experienced in computer security.

(3) The assistant director for security shall:

(a) be responsible for a security division to assure security, honesty, fairness, and integrity in the operation and administration of the lottery, including but not limited to an examination of the background of all prospective employees, ticket or chance sales agents, lottery vendors, and lottery contractors. The security division is designated a law enforcement agency for the purpose of administering this part.

(b) in conjunction with the director, confer with the attorney general or his designee to promote and ensure security, honesty, fairness, and integrity of the operation and administration of the lottery; and

(c) in conjunction with the director, report any alleged violation of law to the attorney general, the legislative auditor, and any other appropriate law enforcement authority for further investigation and action.

(4) The salary of the assistant director for security is equal to 90% of the salary of the director of the lottery.

History: **En. Sec. 8, Ch. 669, L. 1985; amd. Sec. 3, Ch. 161, L. 1987.**

Compiler's Comments

1987 Amendment: In (1), at end, inserted "who serves at the pleasure of the director"; and inserted (4).

23-5-1014 and 23-5-1015 reserved.

23-5-1016. Ticket or chance sales agents — licenses. (1) Lottery tickets or chances may be sold only by ticket or chance sales agents licensed by the director in accordance with this section.

(2) The commission shall by rule determine the places at which state lottery game tickets or chances may be sold.

(3) (a) Before issuing a license, the director shall consider:

(i) the financial responsibility and security of the applicant and his business or activity;

(ii) the accessibility of his place of business or activity to the public; and

(iii) the sufficiency of existing licenses to serve the public convenience and the volume of the expected sales.

(b) No person under 18 years of age may sell lottery tickets or chances.

(c) A license as an agent to sell lottery tickets or chances may not be issued to any person to engage in business exclusively as a lottery ticket or chance sales agent.

(4) The director may issue temporary licenses upon conditions he considers necessary.

(5) License applicants shall pay a $50 fee to cover the cost of investigating and processing the application.

(6) The director may require a bond from any licensed agent in an amount provided in the commission's rules and may purchase a blanket bond covering the activities of licensed agents.

(7) A licensed agent shall display his license or a copy thereof conspicuously in accordance with the commission's rules.

(8) A license is not assignable or transferable.

(9) No employee of a ticket or chance sales agent may be required to sell lottery game tickets or chances if the sale is against his religious or moral beliefs.

(10) Sales agents are entitled to no more than a 5% commission on tickets and chances sold.

(11) Each sales agent shall keep a complete and up-to-date set of records and accounts fully showing his sales and provide it for inspection upon request of the commission, the director, the department of commerce, the office of the legislative auditor, or the office of the attorney general.

(12) Sales agents may pay the state lottery only by check, bankdraft, electronic fund transfer, or other recorded, noncash, financial transfer method as determined by the director.

(13) A license may be suspended or revoked for failure to maintain the license qualifications provided in subsection (3) or for violation of any provision of this part or a commission rule. Prior to suspension or revocation, the licensee must be given notice and an opportunity for a hearing.

History: En. Sec. 9, Ch. 669, L. 1985.

23-5-1017. Sales restrictions. (1) The price of each lottery game ticket or chance must be clearly stated thereon. The price of a lottery game chance vended by a machine or electronic device must be clearly stated on the machine or device.

(2) Tickets and chances may not be sold to or purchased by persons under 18 years of age.

(3) Tickets and chances must be paid for in cash.

(4) Tickets and chances may not be sold to or purchased by commissioners, the director, his staff, gaming suppliers doing business with the state lottery, suppliers' officers and employees, employees of any firm auditing or investigating the state lottery, governmental employees auditing or investigating the state lottery, or members of their families living with them.

(5) The names of elected officials may not appear on any ticket or chance.

History: **En. Sec. 10, Ch. 669, L. 1985; amd. Sec. 9, Ch. 161, L. 1987.**

Compiler's Comments

1987 Amendment: In (4) substituted "employees of any firm auditing or investigating the state lottery, governmental employees" for "employees of any firm or governmental agency".

23-5-1018. Disclosure of odds. The director shall make adequate disclosure of the odds with respect to each state lottery game by stating the odds in lottery game advertisements and by posting the odds at each place in which tickets or chances are sold.

History: **En. Sec. 11, Ch. 669, L. 1985.**

23-5-1019. Felony and gambling-related convictions — ineligibility for lottery positions. No person who has been convicted of a felony or a gambling-related offense under federal law or the law of any state may be a commissioner, director, assistant director, employee of the state lottery, or licensed ticket or chance sales agent. Prior to appointment to any such position, a person shall submit to the commission a full set of fingerprints made at a law enforcement agency by an agent or officer of such agency on forms supplied by the agency.

History: **En. Sec. 14, Ch. 669, L. 1985.**

23-5-1020. Conflict of interest. No commissioner, director, assistant director, state lottery employee, licensed ticket or chance sales agent, or member of his family living with him may have a financial interest in any gaming supplier or any contract between the state lottery and a gaming supplier or accept any gift or thing of value from a gaming supplier.

History: **En. Sec. 15, Ch. 669, L. 1985.**

23-5-1021. Disclosures by gaming suppliers. (1) Any person, firm, association, or corporation that submits a bid or proposal for a contract to supply lottery equipment, tickets, or other material or consultant services for use in the operation of the state lottery shall disclose at the time of such bid or proposal:

(a) the supplier's business name and address and the names and addresses of the following:

(i) if the supplier is a partnership, all of the general and limited partners;

(ii) if the supplier is a trust, the trustee and all persons entitled to receive income or benefit from the trust;

(iii) if the supplier is an association, the members, officers, and directors;

(iv) if the supplier is a corporation, the officers, directors, and each owner or holder, directly or indirectly, of any equity security or other evidence of ownership of any interest in the corporation; except that, in the case of owners or holders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed;

(v) if the supplier is a subsidiary company, each intermediary company, holding company, or parent company involved therewith and the officers, directors, and stockholders of each; except that, in the case of owners or holders of publicly held securities of an intermediary company, holding company, or parent company which is a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed;

(b) if the supplier is a corporation, all the states in which the supplier is authorized to do business and the nature of that business;

(c) other jurisdictions in which the supplier has contracts to supply gaming materials, equipment, or consultant services;

(d) the details of any conviction, state or federal, of the supplier or any person whose name and address are required by subsection (1)(a) of a criminal offense punishable by imprisonment for more than 1 year and shall submit to the commission a full set of fingerprints of such person made at a law enforcement agency by an agent or officer of such agency on forms supplied by the agency;

(e) the details of any disciplinary action taken by any state against the supplier or any person whose name and address are required by subsection (1)(a) regarding any matter related to gaming consultant services or the selling, leasing, offering for sale or lease, buying, or servicing of gaming materials or equipment;

(f) audited annual financial statements for the preceding 5 years;

(g) a statement of the gross receipts realized in the preceding year from gaming consultant services and the sale, lease, or distribution of gaming materials or equipment to states operating lotteries and to private persons licensed to conduct gambling, differentiating that portion of the gross receipts attributable to transactions with states operating lotteries from that portion of the gross receipts attributable to transactions with private persons licensed to conduct gambling;

(h) the name and address of any source of gaming materials or equipment for the supplier;

(i) the number of years the supplier has been in the business of supplying gaming consultant services or gaming materials or equipment; and

(j) any other information, accompanied by any documents the commission by rule may reasonably require as being necessary or appropriate in the public interest to accomplish the purposes of this part.

(2) No person, firm, association, or corporation contracting to supply gaming equipment or materials or consultant services to the state for use in the operation of the state lottery may have any financial interest in any person, firm, association, or corporation licensed as a ticket or chance sales agent.

(3) No contract for supplying consultant services or gaming materials or equipment for use in the operation of the state lottery is enforceable against the state unless the requirements of this section have been fulfilled.

History: En. Sec. 17, Ch. 669, L. 1985; amd. Sec. 6, Ch. 161, L. 1987.

Compiler's Comments

1987 Amendment: In (2), near end after "financial interest", substituted "in" for "or connection with".

23-5-1022. Drawings for and payment of prizes — unclaimed prizes. (1) All drawings must be held in public. The selection of winning tickets may not be performed by an employee of the lottery or by a member of the commission. All drawings must be witnessed by a professional staff employee of the legislative auditor's office, and all lottery drawing equipment used in public drawings to select winning prizes or participants for prizes must be examined by the director's staff and a professional staff employee of the legislative auditor's office prior to and after each public drawing.

(2) The commission may provide for the immediate payment of prizes by the ticket or chance sales agent who sold the winning ticket or chance whenever the amount of the prize is less than an amount set by commission rule. Payment may not be made directly by a machine or device or by a computer terminal.

(3) Prizes over $100,000 may in the discretion of the commission be paid either in one lump sum or in equal yearly installments without interest over a period of not more than 20 years, except that each installment payment must be at least $20,000.

(4) Prizes not claimed within 6 months are forfeited and must be paid into the state lottery fund. No interest is due on a prize when a claim is delayed but made within 6 months.

(5) The right to a prize is not assignable, but prizes may be paid to a deceased winner's estate or to a person designated by judicial order.

History: En. Sec. 16, Ch. 669, L. 1985; amd. Sec. 5, Ch. 161, L. 1987.

Compiler's Comments

1987 Amendment: In (3), near end, increased installment period from 10 years to 20 years.

23-5-1023 through 23-5-1025 reserved.

23-5-1026. State lottery fund. There is a fund of the enterprise fund type, as defined in 17-2-102, to be known as the state lottery fund. The gross revenue from the state lottery, consisting of money from the sale of lottery tickets and chances, ticket or chance sales agent license fees, unclaimed prizes, or any other source, must be deposited in the fund, except that, at the discretion of the director, money for prizes paid immediately by a sales agent and money equaling the sales agent's commission may be drawn by a sales agent from his gross revenue before depositing his gross revenue with the state lottery.

History: En. Sec. 12, Ch. 669, L. 1985.

23-5-1027. *(Temporary)* **Disposition of revenue.** (1) (a) As near as possible to 45% of the money paid for tickets or chances must be paid out as prize money, except as provided in subsection (b).

(b) In the case of a regional lottery game, a maximum of 50% of the money paid for tickets or chances may be paid out as prize money.

(2) Up to 15% of the gross revenue from the state lottery may be used by the director to pay the operating expenses of the state lottery. Commissions paid to lottery ticket or chance sales agents are not a state lottery operating expense.

(3) Funds to pay the operating expenses of the lottery are statutorily appropriated as provided in 17-7-502.

(4) That part of all gross revenue not used for the payment of prizes, commissions, and operating expenses is net revenue and must be paid quarterly from the enterprise fund established by 23-5-1026 to the superintendent of public instruction for distribution as equalization aid to the retirement funds required by 20-9-501. The net revenue is statutorily appropriated, as provided in 17-7-502. The superintendent of public instruction shall establish the dollar amount per ANB by dividing the net lottery revenue for the school year by the total state ANB in the prior school year. He shall then notify each county superintendent by the fourth Monday of July of the total retirement fund equalization aid available to the county, as calculated separately for elementary and high school districts using the prior year's ANB and prorated as specified in 20-9-501(6) for any joint school district, and each county superintendent must use such amounts to reduce the total retirement fund levy requirement for elementary school districts and the total retirement fund levy requirement for high school districts. The superintendent of public instruction shall then distribute by state warrant the total amount of net lottery revenue available that has been deposited in the superintendent of public instruction lottery account for each county by October 1 of the school fiscal year.

23-5-1027. *(Effective July 1, 1988)* **Disposition of revenue.** (1) (a) As near as possible to 45% of the money paid for tickets or chances must be paid out as prize money, except as provided in subsection (b).

(b) In the case of a regional lottery game, a maximum of 50% of the money paid for tickets or chances may be paid out as prize money.

(2) Up to 15% of the gross revenue from the state lottery may be used by the director to pay the operating expenses of the state lottery. Commissions paid to lottery ticket or chance sales agents are not a state lottery operating expense.

(3) Funds to pay the operating expenses of the lottery are statutorily appropriated as provided in 17-7-502.

(4) That part of all gross revenue not used for the payment of prizes, commissions, and operating expenses is net revenue and must be paid quarterly from the enterprise fund established by 23-5-1026 to the superintendent of public instruction for distribution as equalization aid to the retirement fund obligations of elementary and high school districts in the manner provided in 20-9-532.

History: En. Sec. 13, Ch. 669, L. 1985; amd. Sec. 4, Ch. 161, L. 1987; amd. Secs. 5, 7, Ch. 635, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 161 in (1)(a), near middle after "tickets or chances", deleted "in each separate state lottery game" and at end deleted "for the game" and inserted "except as provided in subsection (b)"; inserted (1)(b) and (3); and in (4), near beginning of first sentence, inserted "commissions" and near middle of last sentence of temporary version substituted "net lottery revenue available that has been deposited in the superintendent of public instruction lottery account" for "retirement fund equalization aid".

Chapter 635 in version effective July 1, 1988, in (4), in first sentence after "retirement", deleted "funds required by 20-9-501", deleted former second through fifth sentences distributing lottery proceeds for teacher retirement on an ANB basis, and inserted current distribution method based on 20-9-532.

Coordination Instruction: Section 7, Ch. 635, L. 1987, a coordination instruction, deleted last sentence of (4), as amended by sec. 4, Ch. 161, L. 1987, that read: "The superintendent of public instruction shall then distribute by state warrant the total amount of net lottery revenue available that has been deposited in the superintendent of public instruction lottery account for each county by October 1 of the school fiscal year."

23-5-1028. Annual audit. The legislative auditor shall conduct an annual audit of the state lottery. The costs of the audit must be paid out of the state lottery fund. A copy of the audit report must be delivered to the commission, the director, the governor, the president of the senate, the speaker of the house of representatives, and each member of the appropriate committee of each house of the legislature as determined by the president of the senate and the speaker of the house.

History: En. Sec. 18, Ch. 669, L. 1985.

23-5-1029. Audit of lottery security. (1) After the first 9 months of sales to the public and every 2 years after that, the office of the legislative auditor shall conduct or have conducted a comprehensive audit of all aspects of security in the operation of the lottery. The costs of the audit are a state lottery operating expense and must be paid out of the state lottery fund. The audit must include:

(a) personnel security;

(b) lottery sales agent security;

(c) lottery contractor security;

(d) security of manufacturing operations of lottery contractors;

(e) security against ticket or chance counterfeiting and alteration and other means of fraudulently winning;

(f) security of drawings among entries or finalists;

(g) computer security;

(h) data communications security;

(i) database security;

(j) systems security;

(k) lottery premises and warehouse security;

(l) security in distribution;

(m) security involving validation and payment procedures;

(n) security involving unclaimed prizes;

(o) security aspects applicable to each particular lottery game;

(p) security of drawings in games whenever winners are determined by drawings;

(q) the completeness of security against locating winners in lottery games with preprinted winners by persons involved in their production, storage, distribution, administration, or sales; and

(r) any other aspects of security applicable to any particular lottery game and to the lottery and its operations.

(2) The security audit report must be presented to the commission, the director, the governor, the president of the senate, and the speaker of the house of representatives.

History: En. Sec. 19, Ch. 669, L. 1985.

23-5-1030. Certain audit findings confidential. Specific audit findings relating to security invasion techniques are confidential and may be reported only to the legislative audit committee, the director of the lottery, the commission, the attorney general, and the governor.

History: En. Sec. 8, Ch. 161, L. 1987.

23-5-1031 through 23-5-1035 reserved.

23-5-1036. Penalties. It is a misdemeanor, punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 6 months, or both, to knowingly or purposely:

(1) require an employee to sell lottery tickets or chances in violation of 23-5-1016(9);

(2) violate 23-5-1016(11);

(3) sell a lottery ticket or chance to a person under 18 years of age;

(4) violate subsection (3) or (4) of 23-5-1017;

(5) serve as a commissioner, director, assistant director, employee, or licensed agent of the state lottery in violation of 23-5-1019;

(6) violate 23-5-1020;

(7) violate 23-5-1021; or

(8) influence the winning of a prize through the use of coercion, fraud, deception, or tampering with lottery equipment or materials.

History: En. Sec. 20, Ch. 669, L. 1985.

Part 11

Calcutta Pools

23-5-1101. Definition. As used in this part, "Calcutta pool" means a form of auction pool in which persons bid or wager money, with winnings awarded based on the outcome of an event, except that persons may not bid or wager money on any elementary school or high school sports event.

History: En. Sec. 1, Ch. 550, L. 1987.

23-5-1102. Calcutta pools authorized. It is hereby lawful to conduct or participate in a Calcutta pool as defined in 23-5-1101.

History: En. Sec. 2, Ch. 550, L. 1987.

23-5-1103. Minors not to participate. No person under the age of 18 may be permitted to participate in a Calcutta pool organized or conducted pursuant to this part.

History: En. Sec. 3, Ch. 550, L. 1987.

23-5-1104. Cheating unlawful. It is unlawful for any person to conduct or participate in a Calcutta pool authorized under this part in a manner that results in cheating, misrepresentation, or other disreputable tactics that distract from a fair and equal chance for all participants to win the pool or that otherwise affects the outcome of the pool.

History: En. Sec. 4, Ch. 550, L. 1987.

23-5-1105. Penalty. Any person who violates a provision of this part is guilty of a misdemeanor and upon conviction shall be fined not more than $1,000 or imprisoned in the county jail for a term not to exceed 3 months, or both.

History: En. Sec. 5, Ch. 550, L. 1987.

23-5-1106. Construction. Nothing in this part may be construed to permit a person to conduct a race meet or to bet on a race of a licensed race meet in violation of 23-4-201 and 23-4-301.

History: **En. Sec. 6, Ch. 550, L. 1987.**

TITLE 24

RESERVED

TITLE 25

CIVIL PROCEDURE

Ch.
1. General Provisions.
2. Venue.
3. Service of Process and Other Papers.
4. Pleadings, Motions, and Other Papers.
5. Parties.
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7. Trials.
8. Deposit in Court — Delivery to Party.
9. Judgment.
10. Costs.
11. New Trial.
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14. Proceedings in Aid of Execution.
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Chapters 16 through 18 reserved.
19. Uniform District Court Rules.
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21. Rules of Appellate Procedure.
22. Montana Justice Courts — Rules of Civil Procedure.
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30. Procedure in Municipal Courts.
31. Procedure in Justices' Courts.
32. Procedure in City Courts.
33. Appeal to District Court From Justices' and City Courts.
34. Small Claims Procedure — District Court.
35. Small Claims Procedure — Justice's Court.

CHAPTER 1

GENERAL PROVISIONS

Part 1 — Civil Actions—Form and Commencement

25-1-101. One form of civil action.
25-1-102. Limitations on commencing actions.
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25-1-1101. Registered process server — levying officer.
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25-1-1108 through 25-1-1110 reserved.
25-1-1111. Bond required.
25-1-1112. Action on bond.

Chapter Cross-References

State courts open to every person, Art. II, sec. 16, Mont. Const.

Rights and justice to be administered without sale, denial, or delay, Art. II, sec. 16, Mont. Const.

Speedy remedy for every injury of person, property, or character, Art. II, sec. 16, Mont. Const.

Part 1

Civil Actions — Form and Commencement

25-1-101. One form of civil action. There is in this state but one form of civil action for the enforcement or protection of private rights and the redress or prevention of private wrongs.

History: En. Sec. 1, p. 43, Bannack Stat.; amd. Sec. 1, p. 135, L. 1867; amd. Sec. 1, p. 28, Cod. Stat. 1871; re-en. Sec. 1, p. 40, L. 1877; re-en. Sec. 1, 1st Div. Rev. Stat. 1879; re-en. Sec. 1, 1st Div. Comp. Stat. 1887; amd. Sec. 460, C. Civ. Proc. 1895; re-en. Sec. 6425, Rev. C. 1907; re-en. Sec. 9008, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 307; re-en. Sec. 9008, R.C.M. 1935; R.C.M. 1947, 93-2301.

Cross-References

Actions and special proceedings defined, 27-1-102.

Civil and criminal actions, 27-1-103.

Bases for civil actions, 27-1-104.

25-1-102. Limitations on commencing actions. (1) Civil actions can only be commenced within the periods prescribed in Title 27, chapter 2, after the cause of action shall have accrued, except where, in special cases, a different limitation is prescribed by statute.

(2) The word "action", as used in this section, is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature.

History: (1)En. Sec. 1, p. 466, Bannack Stat.; re-en. Sec. 1, p. 515, Cod. Stat. 1871; re-en. Sec. 28, p. 45, L. 1877; re-en. Sec. 28, 1st Div. Rev. Stat. 1879; re-en. Sec. 28, 1st Div. Comp. Stat.

1887; re-en. Sec. 470, C. Civ. Proc. 1895; re-en. Sec. 6428, Rev. C. 1907; re-en. Sec. 9011, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 312; re-en. Sec. 9011, R.C.M. 1935; Sec. 93-2401, R.C.M. 1947; (2)En. Sec. 559, C. Civ. Proc. 1895; re-en. Sec. 6476, Rev. C. 1907; re-en. Sec. 9066, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 363; re-en. Sec. 9066, R.C.M. 1935; Sec. 93-2720, R.C.M. 1947; R.C.M. 1947, 93-2401, 93-2720; amd. Sec. 79, Ch. 575, L. 1981.

Cross-References

Commencement of action, Rule 3, M.R.Civ.P. (see Title 25, ch. 20).

Definition of special proceeding, 27-1-102.

25-1-103. When action considered pending. An action is deemed to be pending from the time of its commencement until its final determination upon appeal or until the time for appeal has passed, unless the judgment is sooner satisfied.

History: En. Sec. 1895, C. Civ. Proc. 1895; re-en. Sec. 7188, Rev. C. 1907; re-en. Sec. 9821, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1049; re-en. Sec. 9821, R.C.M. 1935; R.C.M. 1947, 93-8706.

Cross-References

Execution of judgment, Title 25, ch. 13.

Time for filing notice of appeal, Rule 5, M.R.App.P. (see Title 25, ch. 21).

Execution of judgment in Justice's Court, Title 25, ch. 31, part 11.

Appeal to District Court from Justices' and City Courts, Title 25, ch. 33.

25-1-104 through 25-1-110 reserved.

25-1-111. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. Sec. 1931, C. Civ. Proc. 1895; re-en. Sec. 7201, Rev. C. 1907; re-en. Sec. 9835, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1064; re-en. Sec. 9835, R.C.M. 1935; R.C.M. 1947, 93-8802.

Part 2

Fees

25-1-201. Fees of clerk of district court. (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, $60; for filing a complaint in intervention, from the intervenor, $60; and for filing a petition for dissolution of marriage, a fee of $100;

(b) from each defendant or respondent, on his appearance, $40;

(c) on the entry of judgment, from the prevailing party, $25;

(d) for preparing copies of papers on file in his office, 50 cents per page for the first five pages of each file, per request, and 25 cents per page thereafter;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for search of court records, 50 cents for each year searched, not to exceed a total of $25;

(h) for filing and docketing a transcript of judgment or abstract of judgment from all other courts, $5;

(i) for issuing an execution or order of sale on a foreclosure of a lien, $2;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $50, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $35;

(o) for filing a declaration of marriage without solemnization, $30;

(p) for filing a motion for substitution of a judge, $100.

(2) Except as provided in subsections (3) through (6), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the general fund of the county. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, $14 must be deposited in and credited to the state general fund, $6.40 must be deposited in and credited to the county general fund, and $9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) Of the fee for filing a petition for dissolution of marriage, $75 must be deposited in the state general fund, $5 must be deposited in the children's trust fund account established by 41-3-702, and $20 must be deposited in and credited to the general fund of the county.

(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

(i) at the commencement of each action or proceeding and for filing a complaint in intervention as provided in subsection (1)(a), $35;

(ii) from each defendant or respondent, on his appearance, as provided in subsection (1)(b), $25;

(iii) on the entry of judgment as provided in subsection (1)(c), $15; and

(iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(m), $15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be deposited in the state general fund.

History: En. Sec. 4636, Pol. C. 1895; re-en. Sec. 3169, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1917; re-en. Sec. 4918, R.C.M. 1921; re-en. Sec. 4918, R.C.M. 1935; amd. Sec. 1, Ch. 218, L. 1967; amd. Sec. 1, Ch. 33, L. 1977; amd. Sec. 1, Ch. 548, L. 1977; R.C.M. 1947, 25-232; amd. Sec. 1, Ch. 493, L. 1981; amd. Sec. 80, Ch. 575, L. 1981; amd. Sec. 1, Ch. 10, L. 1983; amd. Sec. 1, Ch. 12, L. 1983; amd. Sec. 1, Ch. 524, L. 1983; amd. Sec. 11, Ch. 709, L. 1983; amd. Sec. 7, Ch. 610, L. 1985; amd. Sec. 1, Ch. 271, L. 1987; amd. Sec. 1, Ch. 318, L. 1987; amd. Sec. 1, Ch. 642, L. 1987; amd. Sec. 1, Ch. 645, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 271 in (1)(d), after "office", substituted present language for "25 cents per page"; in (1)(e) increased fee to $2 from 50 cents; in (1)(f) increased fee to $1 from 50 cents; in (1)(g) substituted present language for "for administering oath, 25 cents"; and deleted former (1)(h) that read: "(h) for taking depositions, per folio, 20 cents".

Chapter 318 inserted (1)(p); near beginning of (2) inserted reference to subsection (6); and inserted (6).

Chapter 642 in (1)(a), in two places, increased fee for filing complaint from $25 to $60; in (1)(b) increased appearance fee from $15 to $40; in (1)(c) increased fee for entry of judgment from $10 to $25; in (1)(m) increased fee in estate proceedings from $35 to $50; in (2) changed reference to subsections (3) and (4) to reference to subsections (3) through (6); and inserted (5).

Chapter 645 near beginning of (1)(a) inserted "except a petition for dissolution of marriage" and at end substituted "a fee of $100" for "an additional fee of $30"; and substituted present (4) for former (4) that read: "Of the additional fee for filing a petition for dissolution of marriage, $25 must be deposited in the state general fund and $5 must be deposited in the children's trust fund account established by 41-3-702."

Termination Provision Repealed: Section 2, Ch. 645, L. 1987, repealed sec. 13, Ch. 610, L. 1985, which terminated the amendment of this section by sec. 7, Ch. 610, L. 1985.

Cross-References

Duties of the clerk, Title 3, ch. 5, part 5.

Payment of naturalization fees, 3-5-515.

Manner of appearance by party, 25-3-401.

Payment of marriage license fee, 40-1-202.

25-1-202. Fee for court reporter. In every issue of fact in civil actions tried before the court or jury, before the trial commences, there must be paid into the hands of the clerk of the court by each party to the suit the sum of $3, which sum must be paid by said clerk into the treasury of the county where the cause is tried to be applied upon the payment of the salary of the reporter. The prevailing party may have the amount so paid by him taxed in his bill of costs as proper disbursements.

History: En. Sec. 1979, 5th Div. Comp. Stat. 1887; re-en. Sec. 374, C. Civ. Proc. 1895; re-en. Sec. 6377, Rev. C. 1907; re-en. Sec. 8932, R.C.M. 1921; re-en. Sec. 8932, R.C.M. 1935; amd. Sec. 5, Ch. 22, L. 1961; R.C.M. 1947, 93-1905.

Cross-References

Court reporters, Title 3, ch. 5, part 6.

Payment of reporter's fees in military courts, 10-1-406.

Costs generally allowable, 25-10-201.

Costs allowable against the state, 25-10-405, 25-10-702, 25-10-711.

Claiming costs, Title 25, ch. 10, part 5.

Personal liability of public officers for costs, 25-10-701.

Costs allowed in Justice's Court, 25-30-107.

Bill of costs unnecessary in Justice's Court, 25-31-1002.

Part 3

Time

25-1-301. Extension of time. Subject to Rule 6(b), M.R.Civ.P., whenever this code requires or allows an act to be done at or within a specified time, which act relates to the pleadings in the action, the undertakings to be filed, the justification of sureties, the preparation of statements or of amendments thereto, or the service of notices other than of appeal, the time allowed by this code may be extended, upon good cause shown, by the court in which the action is pending or a judge thereof; but such extension shall not exceed 90 days without the consent of the adverse party.

History: En. Sec. 1897, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 27, L. 1903; re-en. Sec. 7190, Rev. C. 1907; re-en. Sec. 9823, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1054; re-en. Sec. 9823, R.C.M. 1935; R.C.M. 1947, 93-8708; amd. Sec. 82, Ch. 575, L. 1981.

Cross-References

Rules concerning time, Title 1, ch. 1, part 3.

Computation and extension of time, Rule 21, M.R.App.P. (see Title 25, ch. 21).

Part 4

Undertakings for Security

25-1-401. Deposit of money in lieu of undertaking. In all cases where an undertaking or bond with sureties is required by the provisions of this code, the plaintiff or defendant may deposit with the clerk of the court or justice of the peace or city judge, as the case may be, a sum of money equal to the amount required by the undertaking or bond, which shall be taken as security in the place thereof. At any time such deposit may be withdrawn by the party making it upon giving the undertaking with sufficient sureties as required by law, approved by the clerk or justice or judge, upon notice to the adverse party or his attorney, who may object to the sufficiency of the sureties in the same manner as though the undertaking were filed in the first instance.

History: **En. Sec. 1904, C. Civ. Proc. 1895; re-en. Sec. 7198, Rev. C. 1907; re-en. Sec. 9831, R.C.M. 1921; re-en. Sec. 9831, R.C.M. 1935; R.C.M. 1947, 93-8716.**

Cross-References

Security for costs, Title 25, ch. 10, part 6.

Undertaking for costs on appeal, Rule 6, M.R.App.P. (see Title 25, ch. 21).

Sureties and their justification, Rule 8, M.R.App.P. (see Title 25, ch. 21).

Appeals in forma pauperis, Rule 18, M.R.App.P. (see Title 25, ch. 21).

Money in lieu of undertaking in Justice's Court, 25-31-115.

Security for costs in Justice's Court, 25-31-402.

25-1-402. Governmental entities not required to give security. In any civil action or proceeding wherein the state, a county, or a municipal corporation or any officer in his official capacity on behalf of the state or a county, city, or town is a party plaintiff or defendant, no bond, undertaking, or security can be required of the state, county, municipal corporation, or town or any officer thereof; but on complying with the other provisions of this code, the state, county, municipal corporation, or town or any officer thereof acting in his official capacity has the same rights, remedies, and benefits as if the bond, undertaking, or security were given and approved as required by this code. The board of trustees of any school district is entitled to the benefit of this section.

History: **En. Sec. 1902, C. Civ. Proc. 1895; re-en. Sec. 7196, Rev. C. 1907; re-en. Sec. 9829, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1058; re-en. Sec. 9829, R.C.M. 1935; R.C.M. 1947, 93-8714.**

Cross-References

Community college included as school district, 20-15-403.

Stay in favor of state without security, Rule 62(e), M.R.Civ.P. (see Title 25, ch. 20).

Part 5

Notice to Attorney General

Part Cross-References

Service of process on state, 2-9-313.

Duties of Attorney General, 2-15-201, 2-15-501.

Service required upon Attorney General, Rule 4D(2)(h), M.R.Civ.P. (see Title 25, ch. 20).

Intervention, Rule 24, M.R.Civ.P. (see Title 25, ch. 20).

Attorney General to be notified of constitutional questions, Rule 24(c), M.R.Civ.P. (see Title 25, ch. 20); Rule 38, M.R.App.P. (see Title 25, ch. 21).

Necessary parties, 27-8-301.

25-1-501. Notice to be given to attorney general when state department or board initiates or intervenes in an action. When a department or board of this state initiates or intervenes in an action in any court, a copy of the complaint, counterclaim, or cross-claim must be served on the attorney general.

History: **En. Sec. 1, Ch. 91, L. 1979.**

25-1-502. Notice of appeal to be served on attorney general. When a department or board of this state appeals from a judgment or order entered in any court of this state, a copy of the notice of appeal must be served on the attorney general.

History: **En. Sec. 2, Ch. 91, L. 1979.**

Parts 6 through 10 reserved

Part 11

Registration of Process Servers — Levying Officers

25-1-1101. Registered process server — levying officer. (1) Any person who makes more than 10 services of process, as defined in 25-3-101, within this state during 1 calendar year shall file a verified certificate of registration as a process server with the clerk of the district court of the county in which he resides or has his principal place of business.

(2) This part does not apply to:

(a) a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of his employment; or

(b) a licensed attorney.

(3) A registered process server may act as a levying officer under Title 25, chapter 13.

History: **En. Sec. 1, Ch. 548, L. 1987.**

25-1-1102. Contents of registration certificate. The certificate of registration of a process server must contain the following statements:

(1) the name, age, address, and telephone number of the registrant;

(2) that the registrant has not been convicted of a felony;

(3) that the registrant has been a resident of this state for a period of 1 year immediately preceding the filing of the certificate; and

(4) that the registrant will perform his duties as a process server in compliance with the provisions of law governing the service of process in this state.

History: **En. Sec. 2, Ch. 548, L. 1987.**

25-1-1103. Fee — duration of certificate. (1) A certificate of registration as a process server must be accompanied by a fee of $100 at the time the certificate is filed. The fee must be deposited in the county general fund for district court operations, unless the county has a district court fund. If the county has a district court fund, the fee must be deposited in that fund.

(2) A certificate of registration is effective for a period of 2 years from the date of filing. A new certificate must be filed upon expiration of a certificate and a new registration fee must accompany the new certificate.

History: **En. Sec. 3, Ch. 548, L. 1987.**

25-1-1104. Handbook for process servers. (1) The department of commerce shall publish a handbook for process servers and levying officers.

(2) Each person who applies to the clerk of the district court of any county for registration as a process server must demonstrate that he has passed an examination based on the handbook and administered by the board of private security patrolmen and investigators provided for in 2-15-1891.

(3) The department of commerce may charge a reasonable examination fee to cover the costs of publishing the handbook and administering the examination provided for in this section.

History: En. Sec. 4, Ch. 548, L. 1987.

25-1-1105. List of process servers — identification. (1) The clerk of the district court shall maintain a list of all process servers registered in the county. The clerk of the district court shall assign a number to each registered process server. Upon renewal of a certificate of registration, the same number may be assigned.

(2) During the course of serving process or acting as a levying officer, a registered process server must have in his possession an identification card with the number assigned under subsection (1) and a photograph of the registered process server. The clerk of the district court shall furnish the identification card, the cost of which must be reimbursed by the process server.

History: En. Sec. 5, Ch. 548, L. 1987.

25-1-1106. Revocation or suspension of certificate. (1) A certificate of registration of a registered process server may be revoked or suspended by the county attorney of the county of registration whenever the registrant makes a service of process not complying with the law.

(2) The county attorney may conduct an investigation concerning the revocation or suspension of a certificate based on the complaint of a person alleging injury caused by improper service of process by the registrant.

(3) The county attorney shall notify the clerk of the district court when a certificate of registration is suspended, revoked, or reinstated.

History: En. Sec. 8, Ch. 548, L. 1987.

25-1-1107. Proof of service — requirements. A proof of service of process signed by a registered process server must indicate the county in which he is registered and the number assigned to him under 25-1-1105.

History: En. Sec. 9, Ch. 548, L. 1987.

25-1-1108 through 25-1-1110 reserved.

25-1-1111. Bond required. (1) The clerk of the district court may not accept a certificate of registration as a process server unless the certificate is accompanied by a surety bond of $10,000 per individual or $100,000 per firm, conditioned upon compliance with this part and all laws governing service of process in this state.

(2) A levying officer may not levy on a judgment that exceeds the value of the bond.

History: En. Sec. 6, Ch. 548, L. 1987.

25-1-1112. Action on bond. (1) Any person who recovers damages for an injury caused by a service of process, made by a registered process server, that did not comply with the law governing service of process in this state may recover the amount of damages from the bond required under 25-1-1111.

(2) If there has been recovery against a registered process server's bond, the registrant must file a new bond within 30 days or reinstate the bond. If the bond has not been reinstated or filed within 30 days, the county attorney must revoke the registrant's certificate.

History: **En. Sec. 7, Ch. 548, L. 1987.**

CHAPTER 2

VENUE

Part 1 — Proper Place of Trial—Venue

25-2-101. Renumbered 25-2-121 by Code Commissioner, 1985.
25-2-102. Renumbered 25-2-122 by Code Commissioner, 1985.
25-2-103. Renumbered 25-2-123 by Code Commissioner, 1985.
25-2-104. Renumbered 25-2-124 by Code Commissioner, 1985.
25-2-105. Renumbered 25-2-125 by Code Commissioner, 1985.
25-2-106. Renumbered 25-2-126(2) by Code Commissioner, 1985.
25-2-107. Repealed.
25-2-108. Renumbered 25-2-118 by Code Commissioner, 1985.
25-2-109 and 25-2-110 reserved.
25-2-111. Scope of part.
25-2-112. Designation of proper place of trial not jurisdictional.
25-2-113. Power of court to change place of trial.
25-2-114. Right of defendant to move for change of place of trial.
25-2-115. Multiple proper counties.
25-2-116. Multiple claims.
25-2-117. Multiple defendants.
25-2-118. Residence of defendant.
25-2-119 and 25-2-120 reserved.
25-2-121. Contracts.
25-2-122. Torts.
25-2-123. Real property.
25-2-124. Recovery of statutory penalty or forfeiture.
25-2-125. Against public officers or their agents.
25-2-126. Against state, county, and political subdivisions.
25-2-127 through 25-2-130 reserved.
25-2-131. Specific statutes control.

Part 2 — Change of Venue

25-2-201. When change of venue required.
25-2-202. Change of venue on agreement of parties.
25-2-203. Papers to be transmitted.
25-2-204. Jurisdiction preserved.
25-2-205. Allocation of costs between counties.
25-2-206. Judgment affecting real property to be transmitted.

Chapter Cross-References

Jurisdiction and venue unaffected, Rule 82, M.R.Civ.P. (see Title 25, ch. 20).

Part 1

Proper Place of Trial — Venue

Part Cross-References

Terms and location of District Courts, Title 3, ch. 5, part 4.

Improper venue as subject of motion, Rule 12(b), M.R.Civ.P. (see Title 25, ch. 20).

Trials and hearings — orders in chambers, Rule 77(b), M.R.Civ.P. (see Title 25, ch. 20).

Appellate review of place of trial, Rule 1, M.R.App.P. (see Title 25, ch. 21).

25-2-101. Renumbered 25-2-121 by Code Commissioner, 1985.

25-2-102. Renumbered 25-2-122 by Code Commissioner, 1985.

25-2-103. Renumbered 25-2-123 by Code Commissioner, 1985.

25-2-104. Renumbered 25-2-124 by Code Commissioner, 1985.

25-2-105. Renumbered 25-2-125 by Code Commissioner, 1985.

25-2-106. Renumbered 25-2-126(2) by Code Commissioner, 1985.

25-2-107. Repealed. Sec. 17, Ch. 432, L. 1985.

History: En. Sec. 20, p. 46, Bannack Stat.; amd. Sec. 20, p. 138, L. 1867; en. Sec. 25, p. 31, Cod. Stat. 1871; re-en. Sec. 59, p. 52, L. 1877; re-en. Sec. 59, 1st Div. Rev. Stat. 1879; re-en. Sec. 59, 1st Div. Comp. Stat. 1887; re-en. Sec. 613, C. Civ. Proc. 1895; re-en. Sec. 6504, Rev. C. 1907; re-en. Sec. 9096, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 395; re-en. Sec. 9096, R.C.M. 1935; R.C.M. 1947, 93-2904(part).

25-2-108. Renumbered 25-2-118 by Code Commissioner, 1985.

25-2-109 and 25-2-110 reserved.

25-2-111. Scope of part. The proper place of trial (venue) of a civil action is in the county or counties designated in this part.

History: En. Sec. 1, Ch. 432, L. 1985.

25-2-112. Designation of proper place of trial not jurisdictional. The designation of a county in this part as a proper place of trial is not jurisdictional and does not prohibit the trial of any cause in any court of this state having jurisdiction.

History: En. Sec. 2, Ch. 432, L. 1985.

Cross-References

Original jurisdiction of Supreme Court, 3-2-202.

Original jurisdiction of District Courts, 3-5-302.

Jurisdiction of Municipal Courts and Justices' Courts, 3-6-103; Title 3, ch. 10, part 3.

Jurisdiction of Water Courts, 3-7-224; Title 3, ch. 7, part 5.

Jurisdiction of City Courts, Title 3, ch. 11, part 1.

Jurisdiction of Small Claims Courts, 3-12-106.

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

25-2-113. Power of court to change place of trial. The designation in this part of a proper place of trial does not affect the power of a court to change the place of a trial for the reasons stated in 25-2-201(2) or (3), or pursuant to an agreement of the parties as provided in 25-2-202.

History: En. Sec. 3, Ch. 432, L. 1985.

25-2-114. Right of defendant to move for change of place of trial. If an action is brought in a county not designated as the proper place of trial, a defendant may move for a change of place of trial to a designated county.

History: En. Sec. 4, Ch. 432, L. 1985.

25-2-115. Multiple proper counties. If this part designates more than one county as a proper place of trial for any action, an action brought in any such county is brought in a proper county and no motion may be granted to change the place of trial upon the ground that the action is not brought in a proper county under 25-2-201(1). If an action is brought in a county not designated as a proper place of trial, a defendant may move for a change of place of trial to any of the designated counties.

History: En. Sec. 5, Ch. 432, L. 1985.

25-2-116. Multiple claims. In an action involving two or more claims for which this part designates more than one as a proper place of trial, a party entitled to a change of place of trial on any claim is entitled to a change of place of trial on the entire action, subject to the power of the court to separate claims or issues for trial under Rule 42(b) of the Montana Rules of Civil Procedure.

History: En. Sec. 6, Ch. 432, L. 1985.

25-2-117. Multiple defendants. If there are two or more defendants in an action, a county that is a proper place of trial for any defendant is proper for all defendants, subject to the power of the court to order separate trials under Rule 42(b) of the Montana Rules of Civil Procedure. If an action with two or more defendants is brought in a county that is not a proper place of trial for any of the defendants, any defendant may make a motion for change of place of trial to any county which is a proper place of trial.

History: En. Sec. 7, Ch. 432, L. 1985.

25-2-118. Residence of defendant. Unless otherwise specified in this part:

(1) except as provided in subsection (3), the proper place of trial for all civil actions is the county in which the defendants or any of them may reside at the commencement of the action;

(2) if none of the defendants reside in the state, the proper place of trial is any county the plaintiff designates in the complaint;

(3) the proper place of trial of an action brought pursuant to Title 40, chapter 4, is the county in which the petitioner has resided during the 90 days preceding the commencement of the action.

History: En. Sec. 20, p. 46, Bannack Stat.; amd. Sec. 20, p. 138, L. 1867; en. Sec. 25, p. 31, Cod. Stat. 1871; re-en. Sec. 59, p. 52, L. 1877; re-en. Sec. 59, 1st Div. Rev. Stat. 1879; re-en. Sec. 59, 1st Div. Comp. Stat. 1887; re-en. Sec. 613, C. Civ. Proc. 1895; re-en. Sec. 6504, Rev. C. 1907; re-en. Sec. 9096, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 395; re-en. Sec. 9096, R.C.M. 1935; R.C.M. 1947, 93-2904(part); amd. Sec. 8, Ch. 432, L. 1985; sec. 25-2-108, MCA 1983; redes. 25-2-118 by Code Commissioner, 1985.

Cross-References

Rules for determination of residence, 1-1-215.

25-2-119 and 25-2-120 reserved.

25-2-121. Contracts. (1) The proper place of trial for actions upon contracts is either:

(a) the county in which the defendants, or any of them, reside at the commencement of the action; or

(b) the county in which the contract was to be performed. The county in which the contract was to be performed is:

(i) the county named in the contract as the place of performance; or

(ii) if no county is named in the contract as the place of performance, the county in which, by necessary implication from the terms of the contract, considering all of the obligations of all parties at the time of its execution, the principal activity was to take place.

(2) Subsections (2)(a) through (2)(d) do not constitute a complete list of classes of contracts; if, however, a contract belongs to one of the following classes, the proper county for such a contract for the purposes of subsection (1)(b)(ii) is:

(a) contracts for the sale of property or goods: the county where possession of the property or goods is to be delivered;

(b) contracts of employment or for the performance of services: the county where the labor or services are to be performed;

(c) contracts of indemnity or insurance: the county where the loss or injury occurred or where a judgment is obtained against the assured or indemnitee or where payment is to be made by the insurer;

(d) contracts for construction or repair: the county where the object to be constructed or repaired is situated or is to be built.

History: En. Sec. 20, p. 46, Bannack Stat.; amd. Sec. 20, p. 138, L. 1867; en. Sec. 25, p. 31, Cod. Stat. 1871; re-en. Sec. 59, p. 52, L. 1877; re-en. Sec. 59, 1st Div. Rev. Stat. 1879; re-en. Sec. 59, 1st Div. Comp. Stat. 1887; re-en. Sec. 613, C. Civ. Proc. 1895; re-en. Sec. 6504, Rev. C. 1907; re-en. Sec. 9096, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 395; re-en. Sec. 9096, R.C.M. 1935; R.C.M. 1947, 93-2904(part); amd. Sec. 9, Ch. 432, L. 1985; sec. 25-2-101, MCA 1983; redes. 25-2-121 by Code Commissioner, 1985.

25-2-122. Torts. The proper place of trial for a tort action is:

(1) the county in which the defendants, or any of them, reside at the commencement of the action; or

(2) the county where the tort was committed. If the tort is interrelated with and dependent upon a claim for breach of contract, the tort was committed, for the purpose of determining the proper place of trial, in the county where the contract was to be performed.

History: En. Sec. 20, p. 46, Bannack Stat.; amd. Sec. 20, p. 138, L. 1867; en. Sec. 25, p. 31, Cod. Stat. 1871; re-en. Sec. 59, p. 52, L. 1877; re-en. Sec. 59, 1st Div. Rev. Stat. 1879; re-en. Sec. 59, 1st Div. Comp. Stat. 1887; re-en. Sec. 613, C. Civ. Proc. 1895; re-en. Sec. 6504, Rev. C. 1907; re-en. Sec. 9096, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 395; re-en. Sec. 9096, R.C.M. 1935; R.C.M. 1947, 93-2904(part); amd. Sec. 10, Ch. 432, L. 1985; sec. 25-2-102, MCA 1983; redes. 25-2-122 by Code Commissioner, 1985.

25-2-123. Real property. (1) The proper place of trial for the following actions is the county in which the subject of the action or some part thereof is situated:

(a) for the recovery of real property or of an estate or an interest therein or for the determination, in any form, of such right or interest;

(b) for injuries to real property;

(c) for the partition of real property;

(d) for the foreclosure of all liens and mortgages on real property.

(2) Where the real property is situated partly in one county and partly in another, the plaintiff may select either of the counties and the county so selected is the proper county for the trial of such action.

(3) The proper place of trial for all actions for the recovery of the possession of, quieting the title to, or the enforcement of liens upon real property is the county in which the real property, or any part thereof, affected by such action or actions is situated.

History: (1), (2)En. Sec. 18, p. 46, Bannack Stat.; en. Sec. 18, p. 137, L. 1867; re-en. Sec. 23, p. 30, Cod. Stat. 1871; re-en. Sec. 56, p. 51, L. 1877; re-en. Sec. 56, 1st Div. Rev. Stat. 1879; re-en. Sec. 56, 1st Div. Comp. Stat.1887; re-en. Sec. 610, C. Civ. Proc. 1895; re-en. Sec. 6501, Rev. C. 1907; re-en. Sec. 9093, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 392; re-en. Sec. 9093, R.C.M. 1935; Sec. 93-2901, R.C.M. 1947; (3)En. Sec. 43, C. Civ. Proc. 1895; re-en. Sec. 6277, Rev. C. 1907; re-en. Sec. 8831, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 78; re-en. Sec. 8831, R.C.M. 1935; Sec. 93-320, R.C.M. 1947; R.C.M. 1947, 93-320(part), 93-2901; amd. Sec. 11, Ch. 432, L. 1985; sec. 25-2-103, MCA 1983; redes. 25-2-123 by Code Commissioner, 1985.

Cross-References

Quieting title to real property, Title 70, ch. 28.

Partition of real property, Title 70, ch. 29.

Definition of foreclosure, 71-1-221.

25-2-124. Recovery of statutory penalty or forfeiture. The proper place of trial for the recovery of a penalty or forfeiture imposed by statute is the county where the cause or some part thereof arose, except that when it is imposed for an offense committed on a lake, river, or other stream of water situated in two or more counties, the action may be brought in any county bordering on such lake, river, or stream and opposite to the place where the offense was committed.

History: En. Sec. 19, p. 46, Bannack Stat.; re-en. Sec. 19, p. 137, L. 1867; re-en. Sec. 24, p. 31, Cod. Stat. 1871; re-en. Sec. 57, p. 51, L. 1877; re-en. Sec. 57, 1st Div. Rev. Stat. 1879; re-en. Sec. 57, 1st Div. Comp. Stat. 1887; re-en. Sec. 611, C. Civ. Proc. 1895; re-en. Sec. 6502, Rev. C. 1907; re-en. Sec. 9094, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 393; re-en. Sec. 9094, R.C.M. 1935; R.C.M. 1947, 93-2902(part); amd. Sec. 12, Ch. 432, L. 1985; sec. 25-2-104, MCA 1983; redes. 25-2-124 by Code Commissioner, 1985.

25-2-125. Against public officers or their agents. The proper place of trial for an action against a public officer or person specially appointed to execute his duties for an act done by him in virtue of his office or against a person who, by his command or in his aid, does anything touching the duties of such officer is the county where the cause or some part thereof arose.

History: En. Sec. 19, p. 46, Bannack Stat.; re-en. Sec. 19, p. 137, L. 1867; re-en. Sec. 24, p. 31, Cod. Stat. 1871; re-en. Sec. 57, p. 51, L. 1877; re-en. Sec. 57, 1st Div. Rev. Stat. 1879; re-en. Sec. 57, 1st Div. Comp. Stat. 1887; re-en. Sec. 611, C. Civ. Proc. 1895; re-en. Sec. 6502, Rev. C. 1907; re-en. Sec. 9094, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 393; re-en. Sec. 9094, R.C.M. 1935; R.C.M. 1947, 93-2902(part); amd. Sec. 13, Ch. 432, L. 1985; sec. 25-2-105, MCA 1983; redes. 25-2-125 by Code Commissioner, 1985.

Cross-References

Bonds of public officers and employees, Title 2, ch. 9, parts 6 through 8.

25-2-126. Against state, county, and political subdivisions. (1) The proper place of trial for an action against the state is in the county in which the claim arose or in Lewis and Clark County. In an action brought by a resident of the state, the county of his residence is also a proper place of trial.

(2) The proper place of trial for an action against a county is that county unless such action is brought by a county, in which case any county not a party thereto is also a proper place of trial.

(3) The proper place of trial for an action against a political subdivision is in the county in which the claim arose or in any county where the political subdivision is located.

History: (1), (3)En. Sec. 21, Ch. 380, L. 1973; R.C.M. 1947, 82-4321; amd. Sec. 15, Ch. 432, L. 1985; sec. 2-9-312, MCA 1983; redes. 25-2-126(1), (3) by Code Commissioner, 1985; (2)En. Sec. 58, p. 52, L. 1877; re-en. Sec. 58, 1st Div. Rev. Stat. 1879; re-en. Sec. 58, 1st Div. Comp. Stat. 1887; amd. Sec. 612, C. Civ. Proc. 1895; re-en. Sec. 6503, Rev. C. 1907; re-en. Sec. 9095, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 394; re-en. Sec. 9095, R.C.M. 1935; R.C.M. 1947, 93-2903; amd. Sec. 14, Ch. 432, L. 1985; sec. 25-2-106, MCA 1983; redes. 25-2-126(2) by Code Commissioner, 1985.

Cross-References

Liability exposure of governmental entities, Title 2, ch. 9, part 1.

Claims and actions against governmental entities, Title 2, ch. 9, part 3.

25-2-127 through 25-2-130 reserved.

25-2-131. Specific statutes control. The provisions of this part do not repeal, by implication or otherwise, specific statutes not within this part, designating a proper place of trial, whether or not such a designation is called venue or proper place of trial.

History: En. Sec. 16, Ch. 432, L. 1985.

Part 2

Change of Venue

Part Cross-References

Right of accused to impartial jury, Art. II, sec. 24, Mont. Const.

Change of venue in emergency, 3-5-405.

Hearings outside district on agreement of parties, Rule 77(b), M.R.Civ.P. (see Title 25, ch. 20).

Appellate review of refusal to change venue, Rule 1, M.R.App.P. (see Title 25, ch. 21).

25-2-201. When change of venue required. The court or judge must, on motion, change the place of trial in the following cases:

(1) when the county designated in the complaint is not the proper county;

(2) when there is reason to believe that an impartial trial cannot be had therein;

(3) when the convenience of witnesses and the ends of justice would be promoted by the change.

History: En. Sec. 21, p. 46, Bannack Stat.; amd. Ch. 8, L. 3d Session 1866, which was set aside by Act of Congress of March 2, 1867; amd. Sec. 1, p. 68, L. 1867; amd. Sec. 27, p. 31, Cod. Stat. 1871; re-en. Sec. 62, p. 53, L. 1877; re-en. Sec. 62, 1st Div. Rev. Stat. 1879; re-en. Sec. 62, 1st Div. Comp. Stat. 1887; amd. Sec. 615, C. Civ. Proc. 1895; en. Ch. 2, Ex. L. 1903; re-en. Sec. 6506, Rev. C. 1907; re-en. Sec. 9098, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 397; re-en. Sec. 9098, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1973; [(4) superseded by Sup. Ct. Ord., 34 St. Rep. 26, eff. March 1, 1977]; R.C.M. 1947, 93-2906.

25-2-202. Change of venue on agreement of parties. All the parties to an action, by stipulation or by consent in open court entered in the minutes, may agree that the place of trial may be changed to any county in the state. Thereupon the court must order the change as agreed upon.

History: En. Sec. 619, C. Civ. Proc. 1895; re-en. Sec. 6510, Rev. C. 1907; re-en. Sec. 9102, R.C.M. 1921; re-en. Sec. 9102, R.C.M. 1935; R.C.M. 1947, 93-2910.

Cross-References

Change of place of hearing upon agreement of parties, Rule 77(b), M.R.Civ.P. (see Title 25, ch. 20).

25-2-203. Papers to be transmitted. When an order is made transferring an action or proceeding for trial, the clerk of the court must transmit the pleading and papers therein to the clerk of the court to which it is transferred.

History: En. Sec. 64, p. 53, L. 1877; re-en. Sec. 64, 1st Div. Rev. Stat. 1879; re-en. Sec. 64, 1st Div. Comp. Stat. 1887; re-en. Sec. 617, C. Civ. Proc. 1895; re-en. Sec. 6508, Rev. C. 1907; re-en. Sec. 9100, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 399; re-en. Sec. 9100, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1971; R.C.M. 1947, 93-2908(part).

25-2-204. Jurisdiction preserved. The court to which an action or proceeding is transferred has and exercises over the same the like jurisdiction as if it had been originally commenced therein.

History: En. Sec. 64, p. 53, L. 1877; re-en. Sec. 64, 1st Div. Rev. Stat. 1879; re-en. Sec. 64, 1st Div. Comp. Stat. 1887; re-en. Sec. 617, C. Civ. Proc. 1895; re-en. Sec. 6508, Rev. C. 1907; re-en. Sec. 9100, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 399; re-en. Sec. 9100, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1971; R.C.M. 1947, 93-2908(part).

Cross-References

District Court jurisdiction, Art. VII, sec. 4, Mont. Const.; Title 3, ch. 5, part 3.

25-2-205. Allocation of costs between counties. In case of a change of the place of trial from one county to another, as provided for in 25-2-201, the county in which the action or proceeding is tried shall recover from the county in which the action was commenced all additional costs or expenses that may have been incurred by such county by reason of extra jurors or bailiff's fees or other court expenses incurred by such county by reason of the hearing or trial of said action, motion, or proceeding. Such extra costs shall be allowed by the court, the clerk of the court of such county shall certify the same to the board of county commissioners of the county in which said action, motion, or proceeding was commenced, and said board shall allow and cause the same to be paid.

History: En. Sec. 1, Ch. 5, Ex. L. 1903; re-en. Sec. 6512, Rev. C. 1907; re-en. Sec. 9104, R.C.M. 1921; re-en. Sec. 9104, R.C.M. 1935; R.C.M. 1947, 93-2912.

25-2-206. Judgment affecting real property to be transmitted. When an action or proceeding affecting the title to or possession of real estate has been brought in or transferred to any court of a county other than the county in which the real estate or some portion of it is situated, the clerk of such court must, after final judgment therein, certify under his seal of office and transmit to the corresponding court of the county in which the real estate affected by the action is situated a copy of the judgment. The clerk receiving such copy must file, docket, and record the judgment in the record of the court, briefly designating it as a judgment transferred from .... court (naming the proper court).

History: En. Sec. 65, p. 54, L. 1877; re-en. Sec. 65, 1st Div. Rev. Stat. 1879; re-en. Sec. 65, 1st Div. Comp. Stat. 1887; re-en. Sec. 618, C. Civ. Proc. 1895; re-en. Sec. 6509, Rev. C. 1907; re-en. Sec. 9101, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 400; re-en. Sec. 9101, R.C.M. 1935; R.C.M. 1947, 93-2909.

CHAPTER 3

SERVICE OF PROCESS AND OTHER PAPERS

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Chapter Cross-References

Service on federal lands, 2-1-202.

Service on military reservation, 2-1-204.

Service within Glacier National Park, 2-1-205.

Service in national parks, 2-1-207.

Service on Fort Peck Dam territory, 2-1-209.

Service on Indian land, 2-1-307.

Service by military court, 10-1-404.

Persons subject to jurisdiction — process — service, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

Service and filing of pleadings and other papers, Rule 5, M.R.Civ.P. (see Title 25, ch. 20).

Service upon foreign rural cooperatives, 35-18-107.

Service in child custody proceedings, 40-7-106.

Service for in-state sales of out-of-state subdivisions, 76-4-1251.

Service upon geophysical exploration firm, 82-1-102.

Part 1

General Provisions

25-3-101. Definitions. As used in parts 2 and 3 of this chapter, the following definitions apply:

(1) "Process" includes all writs, warrants, summonses, and orders of courts of justice or judicial officers.

(2) "Notice" includes all papers and orders (except process) required to be served in any proceeding before any court, board, or officer or required by law to be served independently of such proceeding.

History: En. Sec. 4380, Pol. C. 1895; re-en. Sec. 3009, Rev. C. 1907; re-en. Sec. 4773, R.C.M. 1921; Cal. Pol. C. Sec. 4175; re-en. Sec. 4773, R.C.M. 1935; R.C.M. 1947, 16-2701.

Part 2

Service by an Officer

Part Cross-References
Service by Supreme Court Marshal, 3-2-502.
Service by Constable, 3-10-701, 3-10-706.
Duties of County Sheriff, 7-4-3001; Title 7, ch. 32, part 21.

25-3-201. Delivery of papers to officer. (1) It is the duty of the clerk of any district court, at the request of a party in any civil action pending in such court or his agent or attorney, to forward by mail any process, summons, or other papers required in the cause; and it is the duty of the sheriff, registered process server, or other officer to whom said papers may be directed to receive the same at the place where the same are directed. When process in one county is intended for service in another, it is the duty of the clerk to forward the same in like manner.

(2) If the papers are delivered for service away from the county seat, all necessary copies thereof must be furnished for service.

(3) If any sheriff, registered process server, or other officer refuses to receive any summons or other process at the point where directed to him or to serve the same, he is guilty of a misdemeanor and upon conviction thereof must be fined in any sum not exceeding $100.

History: (1), (3)En. Secs. 1, 2, p. 7, L. 1881; re-en. Sec. 76, 1st Div. Comp. Stat. 1887; en. Sec. 640, C. Civ. Proc. 1895; re-en. Sec. 6523, Rev. C. 1907; re-en. Sec. 9120, R.C.M. 1921; re-en. Sec. 9120, R.C.M. 1935; Sec. 93-3016, R.C.M. 1947; (2)En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; Sec. 25-226, R.C.M. 1947; R.C.M. 1947, 25-226(part), 93-3016(part); amd. Sec. 83, Ch. 575, L. 1981; amd. Sec. 10, Ch. 548, L. 1987.

Compiler's Comments
1987 Amendment: In (1), near middle of first sentence, and in (3), near beginning, inserted "registered process server".

25-3-202. When officer's execution of process justified and required. A sheriff, registered process server, or other ministerial officer is justified in the execution of and must execute all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued.

History: En. Sec. 4395, Pol. C. 1895; re-en. Sec. 3024, Rev. C. 1907; re-en. Sec. 4788, R.C.M. 1921; Cal. Pol. C. Sec. 4187; re-en. Sec. 4788, R.C.M. 1935; R.C.M. 1947, 16-2716; amd. Sec. 11, Ch. 548, L. 1987.

Compiler's Comments
1987 Amendment: Near beginning inserted "registered process server".

25-3-203. Prepayment of cost of service. In no case shall the officer or registered process server receiving papers for service be required to serve the same unless the person in whose behalf the service is made or his agent or attorney first pay the cost of the service upon a demand therefor by the officer or registered process server.

History: En. Secs. 1, 2, p. 7, L. 1881; re-en. Sec. 76, 1st Div. Comp. Stat. 1887; en. Sec. 640, C. Civ. Proc. 1895; re-en. Sec. 6523, Rev. C. 1907; re-en. Sec. 9120, R.C.M. 1921; re-en. Sec. 9120, R.C.M. 1935; R.C.M. 1947, 93-3016(part); amd. Sec. 12, Ch. 548, L. 1987.

Compiler's Comments

1987 Amendment: Near beginning and at end inserted "or registered process server".

25-3-204. Officer to exhibit process. The officer or registered process server executing such process must, then and at all times subsequent so long as he retains it, upon request, show the same with all papers attached to any person interested therein.

History: En. Sec. 4396, Pol. C. 1895; re-en. Sec. 3025, Rev. C. 1907; re-en. Sec. 4789, R.C.M. 1921; Cal. Pol. C. Sec. 4188; re-en. Sec. 4789, R.C.M. 1935; R.C.M. 1947, 16-2717; amd. Sec. 13, Ch. 548, L. 1987.

Compiler's Comments

1987 Amendment: Near beginning inserted "or registered process server".

25-3-205. Execution of process when sheriff a party. When the sheriff is a party to an action or proceeding, the process and orders therein which it would otherwise be the duty of the sheriff to execute must be executed by the coroner of the county or a registered process server.

History: En. Sec. 4399, Pol. C. 1895; re-en. Sec. 3028, Rev. C. 1907; re-en. Sec. 4792, R.C.M. 1921; Cal. Pol. C. Sec. 4191; re-en. Sec. 4792, R.C.M. 1935; R.C.M. 1947, 16-2720; amd. Sec. 14, Ch. 548, L. 1987.

Compiler's Comments

1987 Amendment: At end inserted "or a registered process server".

Cross-References

Duties of County Coroner, 7-4-2911.

25-3-206. Execution by elisor. (1) Process or orders in an action or proceeding may be executed by a person residing in the county, designated by the court or a judge thereof, and denominated an elisor, in the following cases:

(a) The sheriff and coroner are both parties.

(b) Either of these officers is a party and the process is against the other.

(c) Either of these officers is a party and there is a vacancy in the office of the other.

(d) It appears by affidavit to the satisfaction of the court in which the proceeding is pending or the judge thereof that both of these officers are disqualified or, by reason of any bias, prejudice, or other cause, would not act promptly or impartially.

(2) When process is delivered to an elisor, he must execute and return it in the same manner as the sheriff is required to execute similar process. The court or judge may at any time on its own motion appoint an elisor.

History: En. Sec. 4400, Pol. C. 1895; re-en. Sec. 3029, Rev. C. 1907; re-en. Sec. 4793, R.C.M. 1921; Cal. Pol. C. Sec. 4192; re-en. Sec. 4793, R.C.M. 1935; R.C.M. 1947, 16-2721.

Part 3

Return of Service

Part Cross-References
Return of service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Filing and proof of service other than process, Rule 5(d) through 5(f), M.R.Civ.P. (see Title 25, ch. 20).

25-3-301. Time and manner of return. (1) It shall be the duty of the sheriff or other person serving a summons or other process or order required by any of the provisions of this code, issued out of any of the district courts of this state, to make due and legal return of such service and file the same with the clerk of the court in which such action or proceeding is pending not more than 10 days after the making of such service where the same was made in the county in which such action or proceeding is pending and not more than 15 days after the making of such service when the same was made outside of the county in which such action or proceeding is pending. Any failure to make and file such return as required may be punished as a contempt of court.

(2) When process or a notice is returnable to another county or was forwarded under 25-3-201, the sheriff or a registered process server may enclose his return of such process or notice in an envelope addressed to the officer who sent it and deposit it in the post office, prepaying postage.

History: (1)En. Sec. 1, Ch. 38, L. 1907; re-en. Sec. 6527, Rev. C. 1907; re-en. Sec. 9124, R.C.M. 1921; re-en. Sec. 9124, R.C.M. 1935; Sec. 93-3020, R.C.M. 1947; (2)En. Sec. 4385, Pol. C. 1895; re-en. Sec. 3014, Rev. C. 1907; re-en. Sec. 4778, R.C.M. 1921; Cal. Pol. C. Sec. 4177; re-en. Sec. 4778, R.C.M. 1935; Sec. 16-2706, R.C.M. 1947; R.C.M. 1947, 16-2706, 93-3020; amd. Sec. 84, Ch. 575, L. 1981; amd. Sec. 15, Ch. 548, L. 1987.

Compiler's Comments
1987 Amendment: In (2), near middle, inserted "or a registered process server".

25-3-302. Return prima facie evidence. The return of the sheriff or registered process server upon process or notices is prima facie evidence of the facts in such return stated.

History: En. Sec. 4386, Pol. C. 1895; re-en. Sec. 3015, Rev. C. 1907; re-en. Sec. 4779, R.C.M. 1921; Cal. Pol. C. Sec. 4178; re-en. Sec. 4779, R.C.M. 1935; R.C.M. 1947, 16-2707; amd. Sec. 16, Ch. 548, L. 1987.

Compiler's Comments
1987 Amendment: Near beginning inserted "or registered process server".

Part 4

Service of Papers After Defendant's Appearance

Part Cross-References
Service of process upon party, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Service of pleadings upon party's attorney, Rule 5(b), M.R.Civ.P. (see Title 25, ch. 20).

25-3-401. Notice requirements after appearance of defendant. A defendant appears in an action when he answers, files a motion, or gives the plaintiff written notice of his appearance or when an attorney gives notice of appearance for him or has such appearance entered in open court. After appearance, a defendant or his attorney is entitled to notice of all subsequent proceedings of which notice is required to be given.

History: **En. Sec. 494, p. 232, L. 1867; re-en. Sec. 574, p. 152, Cod. Stat. 1871; re-en. Sec. 478, p. 167, L. 1877; re-en. Sec. 478, 1st Div. Rev. Stat. 1879; re-en. Sec. 491, 1st Div. Comp. Stat. 1887; amd. Sec. 1834, C. Civ. Proc. 1895; re-en. Sec. 7149, Rev. C. 1907; re-en. Sec. 9782, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1014; re-en. Sec. 9782, R.C.M. 1935; amd. Sec. 1, Ch. 4, L. 1963; R.C.M. 1947, 93-8505.**

Cross-References

Actual and constructive notice, 1-1-217.

25-3-402. Persons to be served. Subject to the provisions of Rule 5(b), M.R.Civ.P., whenever a plaintiff or a defendant who has appeared resides out of this state and has no attorney in the action or proceeding, service may be made on the clerk of court for him. But in all cases where a party has an attorney in the action or proceeding, the service of papers, when required, must be upon the attorney instead of the party, except of subpoenas, writs, and other process issued in the suit and papers to bring him into contempt, unless the court orders otherwise.

History: **En. Sec. 495, p. 232, L. 1867; re-en. Sec. 575, p. 153, Cod. Stat. 1871; re-en. Sec. 479, p. 168, L. 1877; re-en. Sec. 479, 1st Div. Rev. Stat. 1879; re-en. Sec. 492, 1st Div. Comp. Stat. 1887; re-en. Sec. 1835, C. Civ. Proc. 1895; re-en. Sec. 7150, Rev. C. 1907; re-en. Sec. 9783, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1015; re-en. Sec. 9783, R.C.M. 1935; R.C.M. 1947, 93-8506; amd. Sec. 85, Ch. 575, L. 1981.**

Part 5

Alternative Methods of Service

Part Cross-References

Service by publication, Rule 4D(5), M.R.Civ.P. (see Title 25, ch. 20).

25-3-501. Service of telephonic or telegraphic copy. (1) Any summons, writ, or order in any civil action or proceeding and all other papers requiring service may be transmitted by telegraph or telephone for such service in any place; and the telegraphic or telephonic copy of such writ, order, or paper so transmitted may be served or executed by the officer or person to whom it is sent for that purpose and returned by him, if any return be requisite, in the same manner and with the same force and effect in all respects as the original thereof might be delivered to him; and the officer or person serving or executing the same has the same authority and is subject to the same liabilities as if the copy were the original.

(2) The original, when a writ or order, must also be filed in the court from which it was issued, and a certified copy thereof must be preserved in the telegraph or telephone office from which it is sent. In sending it, either the original or certified copy may be used by the operator for that purpose. Whenever any document to be sent by telegraph or telephone bears a seal, either private or official, it is not necessary for the operator, in sending the same, to telegraph or telephone a description of the seal or any words or device thereon, but the same may be expressed in the telegraphic or telephonic copy by the letters "L.S." or by the word "seal".

History: **En. Sec. 1837, C. Civ. Proc. 1895; re-en. Sec. 7152, Rev. C. 1907; re-en. Sec. 9785, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1017; re-en. Sec. 9785, R.C.M. 1935; R.C.M. 1947, 93-8508.**

Cross-References
Contents of writings, recordings, and photographs, Art. X, Montana Rules of Evidence (see Title 26, ch. 10).

25-3-502. Publication to be once a week. Where not otherwise expressly prescribed by law, all rules, orders, and decrees of court, summonses, and notices of all kinds, whether given by any court, judge, or clerk thereof or by any other officer, board, or commission, which by the laws of this state are required to be published in any newspaper shall be published once a week during the time prescribed by law for publication thereof, whether such publication be made in a weekly, semiweekly, triweekly, or daily newspaper.

History: En. Sec. 1, Ch. 104, L. 1917; re-en. Sec. 9833, R.C.M. 1921; re-en. Sec. 9833, R.C.M. 1935; R.C.M.1947, 93-8718.

Cross-References
Week defined, 1-1-301.
Service of process by publication, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

25-3-503. What suffices as once a week. Whenever any statute of Montana requires the publication of any notice, order, or other paper or document in any newspaper once a week for any specified number of weeks, it shall be sufficient to so publish the same once each week for such number of times as shall equal the number of weeks so designated.

History: En. Sec. 1, Ch. 76, L. 1929; re-en. Sec. 9833.1, R.C.M. 1935; R.C.M. 1947, 93-8719.

Cross-References
Week defined, 1-1-301.

25-3-504. Designating unknown persons as defendants. (1) In the situations listed in Rule 4D(5)(a), M.R.Civ.P., persons whose names are unknown to plaintiff may be made parties defendant, either on the filing of the complaint, cross complaint, or complaint in intervention, as the case may be, or at any time thereafter by amendment thereof, by the name and description of unknown owners, unknown heirs, or unknown devisees of any deceased person or by all of such designations.

(2) (a) When persons are made parties defendant by the designation of unknown owners, it shall not be necessary to add to such designation in the title of the action a description of the property involved, whether real, personal, or mixed, of which such persons are claimed or supposed to be unknown owners or claimants or parties in interest, but a description of the property involved shall be included in the body of the summons for publication in the action.

(b) When persons are made defendant by the style and description of unknown heirs or devisees, there shall be added to such designation of them the name of the deceased person of whom they shall be claimed or supposed to be the heirs or devisees.

History: En. Sec. 1, Ch. 105, L. 1941; amd. Sec. 1, Ch. 179, L. 1943; R.C.M. 1947, 93-2819; amd. Sec. 86, Ch. 575, L. 1981.

Cross-References
Definition of person, Rule 4A, M.R.Civ.P. (see Title 25, ch. 20).
Caption and name of parties, Rule 10(a), M.R.Civ.P. (see Title 25, ch. 20).
Misjoinder and nonjoinder of parties, Rule 21, M.R.Civ.P. (see Title 25, ch. 20).
Determination of members of class in class action, Rule 23(c), M.R.Civ.P. (see Title 25, ch. 20).

25-3-505. Effect of service by publication upon unknown persons. Judgments and decrees rendered in actions or proceedings when persons have been so made parties and served by publication of summons shall have the effect prescribed in Rule 4D(5)(b), M.R.Civ.P. If such persons are made parties by the designation of:

(1) unknown heirs, the judgment or decree shall be conclusive as to all heirs of such deceased party;

(2) unknown devisees, the judgment or decree in such proceedings shall be conclusive as against all devisees of such deceased person;

(3) unknown owners, the judgment or decree rendered in such action or proceeding shall be conclusive as against the world, including persons with contingent interests in the controversy and persons not in being who may have an interest or contingent interest therein.

History: En. Sec. 2, Ch. 105, L. 1941; R.C.M. 1947, 93-2820; amd. Sec. 87, Ch. 575, L. 1981.

Cross-References

Default, Rule 55, M.R.Civ.P. (see Title 25, ch. 20).

Part 6

Service on Secretary of State — Nonresident Motorists

Part Cross-References

Duties of Secretary of State, 2-15-401.

Service on Secretary of State, Rule 4D(6), M.R.Civ.P. (see Title 25, ch. 20).

25-3-601. Conditional granting of use of highways to nonresidents. Subject to a compliance with the motor vehicle laws of this state and the acceptance of the provisions of this part and 25-10-206, nonresident owners and operators of motor vehicles hereby are granted the privilege of using the highways, roads, and streets of this state and its political subdivisions, and the use of such highways, roads, and streets shall be deemed and construed to be an acceptance of the provisions of this part and 25-10-206.

History: En. Sec. 1, Ch. 10, L. 1937; R.C.M. 1947, 53-201.

Cross-References

Motor vehicle equipment, Title 61, ch. 9.

Traffic regulations, Title 61, ch. 8.

Motor vehicle licenses, Title 61, ch. 3.

25-3-602. Operation of vehicle considered consent to service on secretary of state. The acceptance by a nonresident of the rights and privileges conferred by the laws of this state to use the highways, roads, and streets of the state and its political subdivisions, as evidenced by his operating a motor vehicle thereon, shall be deemed equivalent to and construed to be an appointment by such nonresident of the secretary of state of the state of Montana to be his true and lawful attorney upon whom may be served all lawful summonses and processes against him growing out of any accident, collision, or liability in which said nonresident may be involved while operating a motor vehicle upon such highways, roads, and streets; and said acceptance or operation shall be a signification of his agreement that any summons or process against him which is so served shall be of the same legal force and validity as if served on him personally within the state of Montana.

History: En. Sec. 2, Ch. 10, L. 1937; R.C.M. 1947, 53-202.

Cross-References
Service on Secretary of State, Rule 4D(6), M.R.Civ.P. (see Title 25, ch. 20).

25-3-603. Operation of vehicle by agent. The operation by any person, by himself or his agent, of any motor vehicle, whether registered or unregistered and with or without a license to operate, on any public way in this state shall be deemed equivalent to an appointment by such person of the secretary of state or his successor in office to be his true and lawful attorney upon whom may be served all lawful processes in any action or proceeding against him growing out of an accident or collision in which he or his agent may be involved while operating a motor vehicle on any public way in this state; and such operation shall be a signification of an agreement by such person that any such process against him which is served upon the secretary of state or his successor in office shall be of the same force and validity as if served upon him personally. This section shall not apply in case of any cause of action, for the service of process in which provision is made by 25-3-602, nor shall it authorize service of process upon any person who may with due diligence be found and personally served with process within the state of Montana.

History: En. Sec. 3, Ch. 10, L. 1937; R.C.M. 1947, 53-203.

Cross-References
Personal service within state, Rule 4D(2), M.R.Civ.P. (see Title 25, ch. 20).
Agency, Title 28, ch. 10.

25-3-604. Secretary of state's record of process served. The secretary of state shall keep a record of all such summonses and process, which shall show the day of service.

History: En. Sec. 6, Ch. 10, L. 1937; R.C.M. 1947, 53-206.

Cross-References
Public records, Title 2, ch. 6.

CHAPTER 4

PLEADINGS, MOTIONS, AND OTHER PAPERS

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25-4-601. Procedure when answer admits part of plaintiff's claim.
25-4-602. Judgment for excess when plaintiff admits counterclaim.

Part 1

General Provisions

25-4-101. Motions and orders — where made. (1) Motions must be made in the county in which the action is brought or in any adjoining county in the same district. In case of the absence of the judge of the district from his district or in an action pending in which such judge is disqualified to act, such motion may be made before the judge of any adjoining district unless there is another judge in the same district who is not disqualified to act, in which case such motion shall be made before another judge in the same district.

(2) Orders made out of court may be made by the judge of the court in any part of the state.

History: En. Sec. 418, p. 128, Bannack Stat.; re-en. Sec. 487, p. 231, L. 1867; amd. Sec. 567, p. 151, Cod. Stat. 1871; amd. Sec. 470, p. 166, L. 1877; re-en. Sec. 470, 1st Div. Rev. Stat. 1879; re-en. Sec. 483, 1st Div. Comp. Stat. 1887; re-en. Sec. 1821, C. Civ. Proc. 1895; re-en. Sec. 7140, Rev. C. 1907; re-en. Sec. 9773, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1004; re-en. Sec. 9773, R.C.M. 1935; R.C.M. 1947, 93-8402; amd. Sec. 88, Ch. 575, L. 1981.

Cross-References

Definition of districts and assignment of judges, Title 3, ch. 5, part 1.

Powers of judges at chambers, 3-5-311.

Jurisdiction of judges coextensive with the state, 3-5-312.

Terms and location of District Courts, Title 3, ch. 5, part 4.

Motions and other papers, Rule 7(b), M.R.Civ.P. (see Title 25, ch. 20).

Hearings outside district upon stipulation of parties, Rule 77(b), M.R.Civ.P. (see Title 25, ch. 20).

25-4-102. Transfer when judge unable to hear motion or return of order. When a notice of motion is given or an order to show cause is made returnable before a judge out of court and, at the time fixed for the motion or on the return day of the order, the judge is unable to hear the parties, the matter may be transferred by his order to some other judge.

History: En. Sec. 420, p. 129, Bannack Stat.; re-en. Sec. 489, p. 231, L. 1867; re-en. Sec. 569, p. 152, Cod. Stat. 1871; re-en. Sec. 472, p. 166, L. 1877; re-en. Sec. 472, 1st Div. Rev. Stat. 1879; re-en. Sec. 485, 1st Div. Comp. Stat. 1887; amd. Sec. 1823, C. Civ. Proc. 1895; re-en. Sec. 7142, Rev. C. 1907; re-en. Sec. 9775, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1006; re-en. Sec. 9775, R.C.M. 1935; R.C.M. 1947, 93-8404.

Cross-References

Motions and other papers, Rule 7(b), M.R.Civ.P. (see Title 25, ch. 20).

25-4-103. Vacating or modifying order made without notice. An order made out of court without notice to the adverse party may be vacated or modified, without notice, by the judge who made it, or it may be vacated or modified on notice in the manner in which other motions are made.

History: En. Sec. 249, p. 94, Bannack Stat.; re-en. Sec. 318, p. 199, L. 1867; re-en. Sec. 367, p. 107, Cod. Stat. 1871; re-en. Sec. 406, p. 149, L. 1877; re-en. Sec. 406, 1st Div. Rev. Stat. 1879; re-en. Sec. 419, 1st Div. Comp. Stat. 1887; re-en. Sec. 1824, C. Civ. Proc. 1895; re-en. Sec. 7143, Rev. C. 1907; re-en. Sec. 9776, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 937; re-en. Sec. 9776, R.C.M. 1935; R.C.M. 1947, 93-8405.

25-4-104 through 25-4-110 reserved.

25-4-111. Lost papers. If an original pleading or paper be lost, the court may authorize a copy thereof to be filed and used instead of the original.

History: En. Sec. 1891, C. Civ. Proc. 1895; re-en. Sec. 7184, Rev. C. 1907; re-en. Sec. 9817, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1045; re-en. Sec. 9817, R.C.M. 1935; R.C.M. 1947, 93-8702.

25-4-112. Papers with technical defects. An affidavit, notice, or other paper without the title of the action or proceeding in which it is made or with a defective title is as valid and effectual for any purpose as if duly entitled if it intelligibly refers to such action or proceeding.

History: En. Sec. 424, p. 129, Bannack Stat.; re-en. Sec. 502, p. 233, L. 1867; re-en. Sec. 579, p. 153, Cod. Stat. 1871; re-en. Sec. 520, p. 177, L. 1877; re-en. Sec. 520, 1st Div. Rev. Stat. 1879; re-en. Sec. 537, 1st Div. Comp. Stat. 1887; re-en. Sec. 1892, C. Civ. Proc. 1895; re-en. Sec. 7185, Rev. C. 1907; re-en. Sec. 9818, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1046; re-en. Sec. 9818, R.C.M. 1935; R.C.M. 1947, 93-8703.

Cross-References

Caption — names of parties, Rule 10(a), M.R.Civ.P. (see Title 25, ch. 20).

Part 2

Pleadings in General

Part Cross-References

Pleadings allowed — form of motions, Rule 7, M.R.Civ.P. (see Title 25, ch. 20).

General rules of pleading, Rule 8, M.R.Civ.P. (see Title 25, ch. 20).

Form of pleadings, Rule 10, M.R.Civ.P. (see Title 25, ch. 20).

25-4-201. Description of real property in complaint. In an action for the recovery of real property, it must be described in the complaint with such certainty as to enable an officer, upon execution, to identify it.

History: En. Sec. 100, p. 64, L. 1877; re-en. Sec. 100, 1st Div. Rev. Stat. 1879; re-en. Sec. 102, 1st Div. Comp. Stat. 1887; re-en. Sec. 744, C. Civ. Proc. 1895; re-en. Sec. 6570, Rev. C. 1907;

re-en. Sec. 9168, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 455; re-en. Sec. 9168, R.C.M. 1935; R.C.M. 1947, 93-3805.

Cross-References

Corner Recordation Act of Montana, Title 70, ch. 22, part 1.

Montana coordinate system, Title 70, ch. 22, part 2.

25-4-202. Copy of written instrument in pleading. The insertion in a pleading of a copy of a written instrument is equivalent to setting forth the instrument according to its legal effect.

History: En. Sec. 748, C. Civ. Proc. 1895; re-en. Sec. 6574, Rev. C. 1907; re-en. Sec. 9172, R.C.M. 1921; re-en. Sec. 9172, R.C.M. 1935; R.C.M. 1947, 93-3809.

Cross-References

Adoption by reference — exhibits, Rule 10(c), M.R.Civ.P. (see Title 25, ch. 20).

25-4-203. Verification of pleadings. (1) In any case in which an affidavit of verification is required, except as otherwise specifically provided, such affidavit of verification must be to the effect that the pleading is true to the knowledge of the deponent, except as to the matters therein stated on information and belief, and that as to those he believes it to be true. Such verification must be made by the party or, if there are several parties united in interest or pleading, by one at least of such parties acquainted with the facts if such party is in the county and capable of making the affidavit. The verification may also be made by the agent or attorney of the party if the party is absent from the county where the attorney resides or is from any other cause unable to verify the pleading, and in such case the verification must state that the deponent is the agent or attorney of the party, the reason why such verification is made by such agent or attorney, and that the matters stated in the pleadings are true to the best knowledge, information, and belief of such agent or attorney.

(2) When a corporation is a party, the verification may be made by any officer thereof and must state what officer he is and that the matters stated therein are true to the best knowledge, information, and belief of such officer. If there is no officer of the corporation within the county, the verification may be made by its attorney.

History: En. Sec. 55, p. 144, L. 1867; amd. Sec. 9, p. 64, L. 1869; amd. Sec. 63, p. 39, Cod. Stat. 1871; re-en. Sec. 94, p. 62, L. 1877; re-en. Sec. 94, 1st Div. Rev. Stat. 1879; re-en. Sec. 96, 1st Div. Comp. Stat. 1887; en. Sec. 731, C. Civ. Proc. 1895; re-en. Sec. 6565, Rev. C. 1907; re-en. Sec. 9163, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 446; re-en. Sec. 9163, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1963; R.C.M. 1947, 93-3702.

Cross-References

Signing of pleadings, Rule 11, M.R.Civ.P. (see Title 25, ch. 20).

False swearing, 45-7-202.

25-4-204. Time for amendment or reply after motion on pleading. When a motion concerning a pleading is sustained or overruled and time to amend, answer, or reply is given, the time so given runs from service of notice of the decision or order, except when the party against whom the decision is made is in court. In such case the time runs from the making of the decision or order.

History: En. Sec. 779, C. Civ. Proc. 1895; re-en. Sec. 6594, Rev. C. 1907; re-en. Sec. 9192, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 476; re-en. Sec. 9192, R.C.M. 1935; amd. Sec. 2, Ch. 8, L. 1937; R.C.M. 1947, 93-3910; amd. Sec. 89, Ch. 575, L. 1981.

Cross-References
Costs of motion, 25-10-202.
Time for reply after motion, Rule 12(b), M.R.Civ.P. (see Title 25, ch. 20).

Part 3

Pleading Special Matters

Part Cross-References
Pleading special matters, Rule 9, M.R.Civ.P. (see Title 25, ch. 20).
Pleading licensure in action to collect brokerage commission, 37-51-401.
Consideration of mistake or imperfection in grant of real property, 70-20-202.

25-4-301. Pleading statute of limitations. In pleading the statute of limitations, it is not necessary to state the facts showing the defense, but it may be stated generally that the cause of action is barred by the provisions of section .... (giving the number of the section and subsection thereof, if it is so divided, relied upon). If such allegation be controverted, the party pleading must establish, on the trial, the facts showing that the cause of action is so barred.

History: En. Sec. 103, p. 64, L. 1877; re-en. Sec. 103, 1st Div. Rev. Stat. 1879; re-en. Sec. 105, 1st Div. Comp. Stat. 1887; re-en. Sec. 749, C. Civ. Proc. 1895; re-en. Sec. 6575, Rev. C. 1907; re-en. Sec. 9173, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 458; re-en. Sec. 9173, R.C.M. 1935; R.C.M. 1947, 93-3810.

Cross-References
Limitation on actions involving public contracts, 18-1-402.
Limitations on commencement of civil actions, 25-1-102.
Statutes of Limitations, Title 27, ch. 2.
Statute of Limitations in contracts for sale, 30-2-725.

25-4-302. Pleading an account. It is not necessary for a party to set forth in a pleading the items of an account therein alleged, but he must deliver to the adverse party, within 5 days or such further time as the court may allow or may be agreed to by the parties, after a demand thereof in writing, a copy of the account or be precluded from giving evidence thereof. The court or judge thereof may order a further account when the one delivered is too general or is defective in any particular.

History: En. Sec. 55, p. 53, Bannack Stat.; amd. Sec. 56, p. 145, L. 1867; re-en. Sec. 64, p. 40, Cod. Stat. 1871; re-en. Sec. 99, p. 64, L. 1877; re-en. Sec. 99, 1st Div. Rev. Stat. 1879; re-en. Sec. 101, 1st Div. Comp. Stat. 1887; amd. Sec. 743, C. Civ. Proc. 1895; re-en. Sec. 6569, Rev. C. 1907; re-en. Sec. 9167, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 454; re-en. Sec. 9167, R.C.M. 1935; R.C.M. 1947, 93-3804.

25-4-303. True value of property — action for taking. When, in an action to recover the possession of personal property, the person making any affidavit did not truly state the value of the property and the officer taking the property or the sureties on any bond or undertaking are sued for taking the same, the officer or sureties may, in their answer, set up the true value of the property and that the person in whose behalf said affidavit was made was entitled to the possession of the same when said affidavit was made or that the value in the affidavit stated was inserted by mistake, whereupon the court must disregard the value as stated in the affidavit.

History: En. Sec. 115, p. 67, L. 1877; re-en. Sec. 115, 1st Div. Rev. Stat. 1879; re-en. Sec. 117, 1st Div. Comp. Stat. 1887; amd. Sec. 775, C. Civ. Proc. 1895; re-en. Sec. 6590, Rev. C. 1907; re-en. Sec. 9188, R.C.M. 1921; re-en. Sec. 9188, R.C.M. 1935; R.C.M. 1947, 93-3906.

Cross-References

Affidavits as evidence, Title 26, ch. 1, part 10.

Actions for claim and delivery, Title 27, ch. 17, part 1.

25-4-304 through 25-4-310 reserved.

25-4-311. Damages for personal injury or wrongful death not to be stated. In an action for the recovery of money or damages for personal injury or wrongful death, the amount thereof may not be stated in the claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim.

History: En. 93-2721 by Sec. 1, Ch. 525, L. 1977; R.C.M. 1947, 93-2721.

Cross-References

Counterclaim and cross-claim, Rule 13, M.R.Civ.P. (see Title 25, ch. 20).

Third-party practice, Rule 14, M.R.Civ.P. (see Title 25, ch. 20).

Damages for wrongful death or personal injuries inflicted by dueling, 27-1-223.

Wrongful death, 27-1-323.

Action by parent or guardian for injury to or death of child or ward, 27-1-512.

Action for wrongful death of adult, 27-1-513.

25-4-312. Request for statement of damages — response. When an action is filed in the district court to recover damages for personal injury or wrongful death, the parties against whom the action is brought may at any time request a statement setting forth the nature and amount of damages being sought. The request shall be filed and served upon the claimant, who shall file and serve a responsive statement as to damages within 15 days thereafter. In the event that a response is not served, the party, on notice to the claimant, may petition the court in which the action is pending to order the claimant to serve a responsive statement.

History: En. 93-2722 by Sec. 2, Ch. 525, L. 1977; R.C.M. 1947, 93-2722.

Cross-References

Damages for wrongful death, 27-1-323.

Action by parent or guardian for injuries to or wrongful death of child or ward, 27-1-512.

Action for wrongful death of adult, 27-1-513.

25-4-313. Notice to defendant when no request for statement. If no request is made for such a statement setting forth the nature and amount of damages being sought, the claimant shall give notice to the defendant of the amount of special and general damages sought to be recovered:

(1) before a default may be taken; or

(2) in the event an answer is filed, at least 45 days prior to the date set for the trial.

History: En. 93-2723 by Sec. 3, Ch. 525, L. 1977; R.C.M. 1947, 93-2723.

25-4-314. Permissive delivery of statement with summons. A copy of the statement setting forth the nature and amount of damages being sought may be delivered to the defendant at the time of service of the summons and complaint but may not be filed for 20 days after the complaint is filed.

History: En. 93-2724 by Sec. 4, Ch. 525, L. 1977; R.C.M. 1947, 93-2724.

Part 4

Counterclaim and Cross-Claim

Part Cross-References

Notice of counterclaim or cross-claim to be given to Attorney General, 25-1-501.

Mode of trial of counterclaim, 25-7-104.

Service of counterclaim or cross-claim on numerous defendants, Rule 5(c), M.R.Civ.P. (see Title 25, ch. 20).

Pleading counterclaim and cross-claim, Rule 7(a), M.R.Civ.P. (see Title 25, ch. 20).

Designation of counterclaim as defense, Rule 8(c), M.R.Civ.P. (see Title 25, ch. 20).

Time for service of counterclaim and cross-claim, Rule 12(a), M.R.Civ.P. (see Title 25, ch. 20).

Counterclaim and cross-claim, Rule 13, M.R.Civ.P. (see Title 25, ch. 20).

Counterclaims and cross-claims against third parties, Rule 14(a), M.R.Civ.P. (see Title 25, ch. 20).

Joinder of claims, Rule 18(a), M.R.Civ.P. (see Title 25, ch. 20).

Dismissal of counterclaim and cross-claim, Rules 41(a) and 41(c), M.R.Civ.P. (see Title 25, ch. 20).

Default to counterclaim or cross-claim, Rule 55(d), M.R.Civ.P. (see Title 25, ch. 20).

Summary judgment on counterclaim or cross-claim, Rules 56(a) and 56(b), M.R.Civ.P. (see Title 25, ch. 20).

Availability of provisional remedies to defendant interposing counterclaim, 27-15-102.

25-4-401. Counterclaim by person sued in representative capacity. In an action against an executor or administrator or other person sued in a representative capacity, the defendant may set forth as a counterclaim a demand belonging to the decedent or other person whom he represents where the person so represented would have been entitled to set forth the same in an action against him.

History: En. Sec. 695, C. Civ. Proc. 1895; re-en. Sec. 6545, Rev. C. 1907; re-en. Sec. 9142, R.C.M. 1921; re-en. Sec. 9142, R.C.M. 1935; R.C.M. 1947, 93-3406.

Cross-References

Right to bring action or assert defense, Title 27, ch. 1, part 5.

Powers and duties of personal representative, Title 72, ch. 3, part 6; Title 72, ch. 12, part 5.

25-4-402. Counterclaim against person suing in representative capacity. In an action brought by an executor or administrator in his representative capacity, a demand against the decedent belonging at the time of his death to the defendant may be set forth by the defendant as a counterclaim as if the action had been brought by the decedent in his lifetime, and if a balance is found to be due the defendant, judgment must be rendered therefor against the plaintiff in his representative capacity. Execution can be issued upon such a judgment only in a case where it could be issued upon a judgment in an action against the executor or administrator.

History: En. Sec. 696, C. Civ. Proc. 1895; re-en. Sec. 6546, Rev. C. 1907; re-en. Sec. 9143, R.C.M. 1921; re-en. Sec. 9143, R.C.M. 1935; R.C.M. 1947, 93-3407.

Cross-References

Right to bring action or assert defense, Title 27, ch. 1, part 5.

Powers and duties of personal representative, Title 72, ch. 3, part 6; Title 72, ch. 12, part 5.

25-4-403. Counterclaim in action on contract. A counterclaim on a contract is subject to the following rules:

(1) Except as otherwise provided by the Uniform Commercial Code, if the action is founded upon a contract which has been assigned by the party thereto, a demand existing against the party thereto or an assignee of the contract at the time of the assignment thereof and belonging to the defendant, in good faith, before notice of the assignment must be allowed as a counterclaim to the amount of the plaintiff's demand if it might have been so allowed against the party or the assignee while the contract belonged to him.

(2) If the plaintiff is a trustee for another or if the action is in the name of the plaintiff who has no actual interest in the contract upon which it is

founded, a demand against the plaintiff shall not be allowed as a counterclaim, but so much of a demand existing against the person whom he represents or for whose benefit the action is brought as will satisfy the plaintiff's demand must be allowed as a counterclaim if it might have been so allowed in an action brought by the person beneficially interested.

History: En. Sec. 692, C. Civ. Proc. 1895; re-en. Sec. 6542, Rev. C. 1907; re-en. Sec. 9139, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 438; re-en. Sec. 9139, R.C.M. 1935; amd. Sec. 11-158, Ch. 264, L. 1963; R.C.M. 1947, 93-3403.

Cross-References

Application of rules on transfers to assignments, 28-2-907.

Successive actions on same contract, 28-2-1501.

Assignment of contracts, 30-2-210.

25-4-404. Cross-claim to be asserted in answer. Where the judgment may determine the ultimate rights of two or more defendants as between themselves, a defendant who requires such a determination must demand it in his answer. The controversy between the defendants must not delay a judgment to which the plaintiff is entitled unless the court otherwise directs.

History: En. Sec. 753, C. Civ. Proc. 1895; re-en. Sec. 6579, Rev. C. 1907; re-en. Sec. 9177, R.C.M. 1921; re-en. Sec. 9177, R.C.M. 1935; R.C.M. 1947, 93-3814.

Cross-References

Rights and justice to be administered without sale, denial, or delay, Art. II, sec. 16, Mont. Const.

Speedy remedy for every injury of person, property, or character, Art. II, sec. 16, Mont. Const.

Third-party practice, Rule 14, M.R.Civ.P. (see Title 25, ch. 20).

Part 5

Motion to Postpone Trial

Part Cross-References

Costs of postponement, 25-10-203.

25-4-501. Motion to postpone trial for absence of testimony. A motion to postpone a trial on grounds of the absence of evidence shall only be made upon affidavit showing the materiality of the evidence expected to be obtained and that due diligence has been used to procure it.

History: En. Sec. 130, p. 69, Bannack Stat.; re-en. Sec. 158, p. 163, L. 1867; en. Sec. 194, p. 65, Cod. Stat. 1871; re-en. Sec. 244, p. 98, L. 1877; re-en. Sec. 244, 1st Div. Rev. Stat. 1879; re-en. Sec. 253, 1st Div. Comp. Stat. 1887; re-en. Sec. 1039, C. Civ. Proc. 1895; re-en. Sec. 6729, Rev. C. 1907; re-en. Sec. 9332, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 595; re-en. Sec. 9332, R.C.M. 1935; R.C.M. 1947, 93-4910(part).

Cross-References

Affidavits as evidence, Title 26, ch. 1, part 10.

25-4-502. No postponement when expected evidence admitted. The court may also require the moving party to state, upon affidavit, the evidence which he expects to obtain, and if the adverse party thereupon admits that such evidence would be given and that it be considered as actually given on the trial or offered and overruled as improper, the trial shall not be postponed.

History: En. Sec. 130, p. 69, Bannack Stat.; re-en. Sec. 158, p. 163, L. 1867; en. Sec. 194, p. 65, Cod. Stat. 1871; re-en. Sec. 244, p. 98, L. 1877; re-en. Sec. 244, 1st Div. Rev. Stat. 1879; re-en. Sec. 253, 1st Div. Comp. Stat. 1887; re-en. Sec. 1039, C. Civ. Proc. 1895; re-en. Sec. 6729, Rev. C. 1907; re-en. Sec. 9332, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 595; re-en. Sec. 9332, R.C.M. 1935; R.C.M. 1947, 93-4910(part).

25-4-503. Postponement on other grounds. Upon good cause shown and in furtherance of justice, the court may, in its discretion, postpone a trial or proceeding upon other grounds than the absence of evidence under such conditions as the court may direct.

History: **En. Sec. 130, p. 69, Bannack Stat.; re-en. Sec. 158, p. 163, L. 1867; en. Sec. 194, p. 65, Cod. Stat. 1871; re-en. Sec. 244, p. 98, L. 1877; re-en. Sec. 244, 1st Div. Rev. Stat. 1879; re-en. Sec. 253, 1st Div. Comp. Stat. 1887; re-en. Sec. 1039, C. Civ. Proc. 1895; re-en. Sec. 6729, Rev. C. 1907; re-en. Sec. 9332, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 595; re-en. Sec. 9332, R.C.M. 1935; R.C.M. 1947, 93-4910(part); amd. Sec. 90, Ch. 575, L. 1981.**

Cross-References

Postponement to judicial day, 3-1-303.

Postponement for defense, Rule 4D(6)(b), M.R.Civ.P. (see Title 25, ch. 20).

Postponement for amendments, Rule 15(b), M.R.Civ.P. (see Title 25, ch. 20).

Postponement to obtain affidavits, Rule 56(f), M.R.Civ.P. (see Title 25, ch. 20).

Postponement for motion for new trial, Rule 59(d), M.R.Civ.P. (see Title 25, ch. 20).

25-4-504. Depositions of witnesses upon postponement. The party obtaining a postponement of a trial in any court of record must, if required by the adverse party, consent that the testimony of any witness of such adverse party who is in attendance be then taken by deposition before a judge or clerk of the court in which the case is pending or before such notary public as the court may indicate, which must accordingly be done, and the testimony so taken may be read on the trial with the same effect and subject to the same objections as if the witnesses were produced.

History: **En. Sec. 447, p. 133, Bannack Stat.; re-en. Sec. 604, p. 158, Cod. Stat. 1871; re-en. Sec. 245, p. 99, L. 1877; re-en. Sec. 245, 1st Div. Rev. Stat. 1879; re-en. Sec. 254, 1st Div. Comp. Stat. 1887; amd. Sec. 1040, C. Civ. Proc. 1895; re-en. Sec. 6730, Rev. C. 1907; re-en. Sec. 9333, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 596; re-en. Sec. 9333, R.C.M. 1935; R.C.M. 1947, 93-4911.**

Cross-References

Deposition defined, 1-1-202.

Before notary public, 1-5-416.

Person before whom depositions may be taken, Rule 28, M.R.Civ.P. (see Title 25, ch. 20).

Depositions upon oral examination, Rule 30, M.R.Civ.P. (see Title 25, ch. 20).

Use of depositions, Rule 32, M.R.Civ.P. (see Title 25, ch. 20).

Part 6

Procedure After Claims Partially Admitted

Part Cross-References

Effect of failure to deny, Rule 8(d), M.R.Civ.P. (see Title 25, ch. 20).

Motion for judgment on the pleadings, Rule 12(c), M.R.Civ.P. (see Title 25, ch. 20).

25-4-601. Procedure when answer admits part of plaintiff's claim. Where the answer of the defendant, expressly or by not denying, admits a part of the plaintiff's claim to be just, the court, upon the plaintiff's motion, may, in its discretion, order that the action be severed, that a judgment be entered for the plaintiff for the part so admitted, and if the plaintiff so elects, that the action be continued with like effect as to the subsequent proceedings as if it had been originally brought for the remainder of the claim. The order must prescribe the time and manner of the plaintiff's election. If the plaintiff elects to continue the action, his right to costs upon the judgment is the same as if it were taken in an action brought for only that part of the claim. If the plaintiff does not elect to continue the action, costs must be awarded as upon final judgment in any other case.

History: **En. Sec. 702, C. Civ. Proc. 1895; re-en. Sec. 6552, Rev. C. 1907; re-en. Sec. 9149, R.C.M. 1921; re-en. Sec. 9149, R.C.M. 1935; R.C.M. 1947, 93-3413.**

Cross-References

Costs, Title 25, ch. 10.

Separate trials — separate judgment, Rules 13(i), 20(b), 42(b), M.R.Civ.P. (see Title 25, ch. 20).

Costs, Rule 54(d), M.R.Civ.P. (see Title 25, ch. 20).

25-4-602. Judgment for excess when plaintiff admits counterclaim. In an action upon contract where the complaint demands judgment for a sum of money only, if the defendant by his answer does not deny the plaintiff's claim but sets up a counterclaim amounting to less than the plaintiff's claim, the plaintiff, upon filing with the clerk an admission of the counterclaim, may take judgment for the excess, as upon a default for want of an answer.

History: En. Sec. 703, C. Civ. Proc. 1895; re-en. Sec. 6553, Rev. C. 1907; re-en. Sec. 9150, R.C.M. 1921; re-en. Sec. 9150, R.C.M. 1935; R.C.M. 1947, 93-3414; amd. Sec. 91, Ch. 575, L. 1981.

Cross-References

Counterclaim and cross-claim, Rule 13, M.R.Civ.P. (see Title 25, ch. 20).

Default, Rule 55, M.R.Civ.P. (see Title 25, ch. 20).

CHAPTER 5

PARTIES

Part 1 — Designation of Parties

25-5-101. Names of parties.
25-5-102. Use of abbreviated names.
25-5-103. Suing a party by a fictitious name.
25-5-104. Action against business association.

Part 2 — Capacity to Be a Party—Joinder

25-5-201. Capacity of married person to be a party.
25-5-202. Who may defend when spouse sued.
25-5-203. Defendants — adverse claims to real property.
25-5-204. Joinder of state as defendant in actions affecting title to property.

Part 3 — Guardian Ad Litem

25-5-301. Appointment of guardian.

Chapter Cross-References

Parties, Rule 17, M.R.Civ.P. (see Title 25, ch. 20).

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

Part 1

Designation of Parties

Part Cross-References

Caption and name of parties, Rule 10(a), M.R.Civ.P. (see Title 25, ch. 20).

25-5-101. Names of parties. In a civil action, the party complaining is known as the plaintiff and the adverse party as the defendant. The party prosecuting a special proceeding may be known as the plaintiff and the adverse party as the defendant.

History: Ap. p. Sec. 2, p. 43, Bannack Stat.; re-en. Sec. 2, p. 136, L. 1867; re-en. Sec. 2, p. 28, Cod. Stat. 1871; re-en. Sec. 2, p. 40, L. 1877; re-en. Sec. 2, 1st Div. Rev. Stat. 1879; re-en. Sec. 2, 1st Div. Comp. Stat. 1887; re-en. Sec. 461, C. Civ. Proc. 1895; re-en. Sec. 6426, Rev. C. 1907; re-en. Sec. 9009, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 308; re-en. Sec. 9009, R.C.M. 1935; Sec. 93-2302, R.C.M. 1947; Ap. p. Sec. 1930, C. Civ. Proc. 1895; re-en. Sec. 7200, Rev. C. 1907; re-en. Sec. 9834, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1063; re-en. Sec. 9834, R.C.M. 1935; Sec. 93-8801, R.C.M. 1947; R.C.M. 1947, 93-2302, 93-8801.

Cross-References

One form of civil action, 25-1-101.

Action defined, 25-1-102.

25-5-102. Use of abbreviated names. It is sufficient in all actions, papers, pleadings, or proceedings to designate any party or person by the initial letter or letters or some contraction of the first name or names, instead of stating the first name in full.

History: En. Sec. 68, p. 55, Bannack Stat.; re-en. Sec. 69, p. 147, L. 1867; re-en. Sec. 77, p. 42, Cod. Stat. 1871; re-en. Sec. 116, p. 67, L. 1877; re-en. Sec. 116, 1st Div. Rev. Stat. 1879; en. Sec. 1, p. 55, L. 1885; re-en. Sec. 118, 1st Div. Comp. Stat. 1887; re-en. Sec. 777, C. Civ. Proc. 1895; re-en. Sec. 6592, Rev. C. 1907; re-en. Sec. 9190, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 474; re-en. Sec. 9190, R.C.M. 1935; R.C.M. 1947, 93-3908(part).

25-5-103. Suing a party by a fictitious name. When the plaintiff is ignorant of the name of the defendant, such defendant may be designated in any pleading or proceeding by any name; and when his true name is discovered, the pleadings or proceedings may be amended accordingly.

History: En. Sec. 68, p. 55, Bannack Stat.; re-en. Sec. 69, p. 147, L. 1867; re-en. Sec. 77, p. 42, Cod. Stat. 1871; re-en. Sec. 116, p. 67, L. 1877; re-en. Sec. 116, 1st Div. Rev. Stat. 1879; en. Sec. 1, p. 55, L. 1885; re-en. Sec. 118, 1st Div. Comp. Stat. 1887; re-en. Sec. 777, C. Civ. Proc. 1895; re-en. Sec. 6592, Rev. C. 1907; re-en. Sec. 9190, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 474; re-en. Sec. 9190, R.C.M. 1935; R.C.M. 1947, 93-3908(part).

Cross-References

Designating unknown persons as defendants, 25-3-504.

25-5-104. Action against business association. When two or more persons associated in any business transact such business under a common name, whether it comprise the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates; and the judgment in the action shall bind the joint property of all the associates in the same manner as if all had been named defendants and had been sued upon their joint liability.

History: En. Sec. 439, p. 132, Bannack Stat.; re-en. Sec. 596, p. 157, Cod. Stat. 1871; amd. Sec. 25, p. 44, L. 1877; re-en. Sec. 25, 1st Div. Rev. Stat. 1879; re-en. Sec. 25, 1st Div. Comp. Stat. 1887; re-en. Sec. 590, C. Civ. Proc. 1895; re-en. Sec. 6497, Rev. C. 1907; re-en. Sec. 9089, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 388; re-en. Sec. 9089, R.C.M. 1935; R.C.M. 1947, 93-2827.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Power of foreign corporation to sue and be sued, 32-1-103.

Power of credit union to sue and be sued, 32-3-401.

Power of corporation to sue and be sued, 35-1-108(2).

Power of corporate receiver to sue and be sued, 35-1-922(4).

Power of nonprofit corporation to sue and be sued, 35-2-107(2).

Power of receiver of nonprofit corporation to sue and be sued, 35-2-712.

Power of religious corporation to sue and be sued, 35-3-205(2).

Power of business trust to sue and be sued, 35-5-103.

Part 2

Capacity to Be a Party — Joinder

Part Cross-References

Capacity, Rule 9(a), M.R.Civ.P. (see Title 25, ch. 20).

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

Misjoinder and nonjoinder of parties, Rule 21, M.R.Civ.P. (see Title 25, ch. 20).

Right to bring action or assert defense, Title 27, ch. 1, part 5.

25-5-201. Capacity of married person to be a party. A married person may sue and be sued in the same manner as if such person were sole.

History: En. Sec. 7, 1st Div. Comp. Stat. 1887; re-en. Sec. 572, C. Civ. Proc. 1895; re-en. Sec. 6479, Rev. C. 1907; re-en. Sec. 9069, R.C.M. 1921; re-en. Sec. 9069, R.C.M. 1935; amd. Sec. 48, Ch. 535, L. 1975; R.C.M. 1947, 93-2803.

Cross-References

Action for wrongful death of adult, 27-1-513.

Who may sue for whose seduction, 27-1-514.

Protection of personal relations — abduction, 27-1-515.

Joint interests, obligations, and powers of husband and wife, Title 40, ch. 2, part 1.

25-5-202. Who may defend when spouse sued. If a husband and wife be sued together, each spouse may defend for his or her own right, and if the other spouse neglect to defend, the spouse who does choose to defend may defend for the other spouse's right also.

History: En. Sec. 8, p. 44, Bannack Stat.; re-en. Sec. 8, p. 136, L. 1867; re-en. Sec. 8, p. 28, Cod. Stat. 1871; amd. Sec. 8, p. 41, L. 1877; re-en. Sec. 8, 1st Div. Rev. Stat. 1879; re-en. Sec. 8, 1st Div. Comp. Stat. 1887; re-en. Sec. 573, C. Civ. Proc. 1895; re-en. Sec. 6480, Rev. C. 1907; re-en. Sec. 9070, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 371; re-en. Sec. 9070, R.C.M. 1935; amd. Sec. 49, Ch. 535, L. 1975; R.C.M. 1947, 93-2804.

25-5-203. Defendants — adverse claims to real property. In an action brought by a person out of possession of real property to determine an adverse claim of an interest or estate therein, the person making such adverse claim and the persons in possession may be joined as defendants, and if the judgment be for the plaintiff, he may have a writ for the possession of the premises as against the defendants in the action against whom the judgment has passed.

History: En. Sec. 17, p. 42, L. 1877; re-en. Sec. 17, 1st Div. Rev. Stat. 1879; re-en. Sec. 17, 1st Div. Comp. Stat. 1887; re-en. Sec. 582, C. Civ. Proc. 1895; re-en. Sec. 6489, Rev. C. 1907; re-en. Sec. 9081, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 380; re-en. Sec. 9081, R.C.M. 1935; R.C.M. 1947, 93-2817.

Cross-References

Real property actions — limitations and adverse possession, Title 70, ch. 19.

Forcible entry and unlawful detainer, Title 70, ch. 27.

Quieting title, Title 70, ch. 28.

25-5-204. Joinder of state as defendant in actions affecting title to property. In any action or proceeding brought in any district court of the state affecting the title to real or personal property in which the state has or claims to have an interest or claim, the state may be made a party defendant to such action or proceeding and its rights or interests adjudicated.

History: En. Sec. 1, Ch. 210, L. 1921; re-en. Sec. 9079, R.C.M. 1921; amd. Sec. 1, Ch. 65, L. 1931; re-en. Sec. 9079, R.C.M. 1935; amd. Sec. 8, Ch. 234, L. 1977; R.C.M. 1947, 93-2815.

Cross-References

Notice to Attorney General, Title 25, ch. 1, part 5.

Service on Attorney General required, Rule 4D(2)(h), M.R.Civ.P. (see Title 25, ch. 20).

General rights of state over property, Title 70, ch. 1, part 2.

Quiet title and partition of personal property, Title 70, ch. 2, part 2.

Adverse possession, Title 70, ch. 19.

Forcible entry and unlawful detainer, Title 70, ch. 27.

Quieting title to real property, Title 70, ch. 28.

Part 3

Guardian Ad Litem

25-5-301. Appointment of guardian. When a guardian ad litem is appointed by the court, he must be appointed as follows:

(1) when the minor is plaintiff, upon the application of the minor if he be of the age of 14 years or, if under that age, upon the application of a relative or friend of the minor;

(2) when the minor is defendant, upon the application of the minor if he be of the age of 14 years and apply within 10 days after the service of the summons or, if under that age or if he neglects so to apply, upon the application of a relative or friend of the minor or of any other party to the action;

(3) when an insane or incompetent person is party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person or of any other party to the action or proceeding.

History: En. Sec. 10, p. 44, Bannack Stat.; re-en. Sec. 10, p. 136, L. 1867; re-en. Sec. 10, p. 28, Cod. Stat. 1871; re-en. Sec. 10, p. 41, L. 1877; re-en. Sec. 10, 1st Div. Rev. Stat. 1879; re-en. Sec. 10, 1st Div. Comp. Stat. 1887; re-en. Sec. 575, C. Civ. Proc. 1895; re-en. Sec. 6482, Rev. C. 1907; re-en. Sec. 9072, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 373; re-en. Sec. 9072, R.C.M. 1935; R.C.M. 1947, 93-2806; amd. Sec. 2, Ch. 2, L. 1983.

Cross-References

Infants or incompetent persons, Rule 17(c), M.R.Civ.P. (see Title 25, ch. 20).

Incompetency, Rule 25(b), M.R.Civ.P. (see Title 25, ch. 20).

Appointment in paternity action, 40-6-110.

Appointment for abused or neglected child, 41-3-303.

Appointment in youth court proceedings, 41-5-512.

CHAPTER 6

RESERVED

CHAPTER 7

TRIALS

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Part 7 — Referees

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25-7-702. Grounds for objection to appointment of referee.
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Chapter Cross-References

Right to trial by jury, Art. II, sec. 26, Mont. Const.

Part 1

Issues — Mode of Trial

Part Cross-References

Duty of jury in trial for libel or slander, Art. II, sec. 7, Mont. Const.

Trial by jury or the court, Rule 39, M.R.Civ.P. (see Title 25, ch. 20).

Province of court and jury, Title 26, ch. 1, part 2.

25-7-101. Issue defined, types of issues. Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party and is controverted by the other. They are of two kinds:

(1) of law; and
(2) of fact.

History: En. Sec. 123, p. 68, Bannack Stat.; re-en. Sec. 151, p. 163, L. 1867; re-en. Sec. 187, p. 64, Cod. Stat. 1871; re-en. Sec. 237, p. 98, L. 1877; re-en. Sec. 237, 1st Div. Rev. Stat. 1879; re-en. Sec. 246, 1st Div. Comp. Stat. 1887; amd. Sec. 1030, C. Civ. Proc. 1895; re-en. Sec. 6720, Rev. C. 1907; re-en. Sec. 9323, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 588; re-en. Sec. 9323, R.C.M. 1935; R.C.M. 1947, 93-4901.

25-7-102. Issues of law to be decided by court. Except as provided in Article II, section 7, of the Montana constitution, all questions of law, including the admissibility of testimony, the facts preliminary to such admission, the construction of statutes and other writings, and other rules of evidence, are to be decided by the court unless they are referred upon consent, and all discussions of law are to be addressed to the court.

History: Ap. p. Sec. 3441, C. Civ. Proc. 1895; re-en. Sec. 8055, Rev. C. 1907; re-en. Sec. 10699, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2102; re-en. Sec. 10699, R.C.M. 1935; Sec. 93-2501-2, R.C.M. 1947; Ap. p. Sec. 126, p. 68, Bannack Stat.; amd. Sec. 154, p. 163, L. 1867; re-en. Sec. 190, p. 64, Cod. Stat. 1871; re-en. Sec. 240, p. 98, L. 1877; re-en. Sec. 240, 1st Div. Rev. Stat. 1879; re-en. Sec. 249, 1st Div. Comp. Stat. 1887; re-en. Sec. 1032, C. Civ. Proc. 1895; re-en. Sec. 6722, Rev. C. 1907; re-en. Sec. 9325, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 591; re-en. Sec. 9325, R.C.M. 1935; Sec. 93-4903, R.C.M. 1947; R.C.M. 1947, 93-4903, 93-2501-2(part); amd. Sec. 92, Ch. 575, L. 1981.

Cross-References

Jury to determine law and facts in prosecutions for libel and slander, Art. II, sec. 7, Mont. Const.

Trial by jury or by the court, Rule 39, M.R.Civ.P. (see Title 25, ch. 20).

Province of court and jury, Title 26, ch. 1, part 2.

Judicial notice of facts, Rule 201, Montana Rules of Evidence (see Title 26, ch. 10).

Judicial notice of law, Rule 202, Montana Rules of Evidence (see Title 26, ch. 10).

Court to decide questions of law, Rule 202(g), Montana Rules of Evidence (see Title 26, ch. 10).

25-7-103. When issues of fact to be decided by jury. All questions of fact, where the trial is by jury, other than those mentioned in 25-7-102 are to be decided by the jury, and all evidence thereon is to be addressed to them, except when otherwise provided by this code.

History: En. Sec. 3440, C. Civ. Proc. 1895; re-en. Sec. 8054, Rev. C. 1907; re-en. Sec. 10698, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2101; re-en. Sec. 10698, R.C.M. 1935; R.C.M. 1947, 93-2501-1.

Cross-References

Trial by jury or by the court, Rule 39, M.R.Civ.P. (see Title 25, ch. 20).

Province of court and jury, Title 26, ch. 1, part 2.

25-7-104. Mode of trial of counterclaim. Where the defendant interposes a counterclaim and thereupon demands an affirmative judgment against the plaintiff, the mode of trial of an issue of fact arising thereupon is the same as if it arose in an action brought by the defendant against the plaintiff for the cause of action stated in the counterclaim and demanding the same judgment.

History: En. Sec. 1036, C. Civ. Proc. 1895; re-en. Sec. 6726, Rev. C. 1907; re-en. Sec. 9329, R.C.M. 1921; re-en. Sec. 9329, R.C.M. 1935; R.C.M. 1947, 93-4907.

Cross-References

Counterclaim and cross-claim, Title 25, ch. 4, part 4; Rule 13, M.R.Civ.P. (see Title 25, ch. 20).

Part 2

Selection of Jury

Part Cross-References

Right to jury trial, Art. II, sec. 26, Mont. Const.

Juries and jurors, Title 3, ch. 15.

Manner of selection and order of examination of jurors, Rule 47(b), M.R.Civ.P. (see Title 25, ch. 20).

Alternate jurors, Rule 47(c), M.R.Civ.P. (see Title 25, ch. 20).

25-7-201. When a jury is to be selected. The procedure in this part for selecting a jury must be pursued as often as an issue is brought to trial by a jury.

History: En. Sec. 1054, C. Civ. Proc. 1895; re-en. Sec. 6735, Rev. C. 1907; amd. Sec. 13, Ch. 35, L. 1919; re-en. Sec. 9338, R.C.M. 1921; re-en. Sec. 9338, R.C.M. 1935; R.C.M. 1947, 93-5005(part).

25-7-202. Judge or jury commissioner to draw ballots. When an issue of fact to be tried by a jury is brought to trial, the district judge or jury commissioner in the presence of two witnesses must openly draw out of the trial juror box as many of the ballots with the names of jurors thereon, one after another, as are sufficient to form a jury for the cause to be tried. Upon stipulation of counsel, the court may order such jurors to be seated in the order drawn.

History: En. Sec. 1050, C. Civ. Proc. 1895; re-en. Sec. 6731, Rev. C. 1907; amd. Sec. 10, Ch. 35, L. 1919; re-en. Sec. 9334, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 600; re-en. Sec. 9334, R.C.M. 1935; amd. Sec. 3, Ch. 151, L. 1937; amd. Sec. 3, Ch. 3, L. 1939; R.C.M. 1947, 93-5001; amd. Sec. 12, Ch. 379, L. 1983.

Cross-References

Clerk as jury commissioner, 3-15-502.

Clerk to call list of jurors summoned and prepare ballots, 3-15-507.

25-7-203. Drawing a new jury when another is impaneled. If an issue is brought to trial by a jury while a jury is impaneled in another cause and not then discharged, the court may order a jury for the trial of that issue to be drawn out of the box containing the ballots then undrawn; but in any other case the ballots with the names of all the trial jurors returned and attending the court must be placed together in the same box before a jury is drawn therefrom.

History: En. Sec. 1056, C. Civ. Proc. 1895; re-en. Sec. 6737, Rev. C. 1907; amd. Sec. 15, Ch. 35, L. 1919; re-en. Sec. 9340, R.C.M. 1921; re-en. Sec. 9340, R.C.M. 1935; R.C.M. 1947, 93-5007; amd. Sec. 13, Ch. 379, L. 1983.

25-7-204. Mode of drawing ballots. Before the first ballot shall have been drawn, the box must be closed and well shaken so as to thoroughly mix the ballots therein. The district judge or the jury commissioner must draw at random a ballot with the juror's name thereon. Upon stipulation of counsel, the court may order the clerk to draw ballots.

History: En. Sec. 1051, C. Civ. Proc. 1895; re-en. Sec. 6732, Rev. C. 1907; amd. Sec. 11, Ch. 35, L. 1919; re-en. Sec. 9335, R.C.M. 1921; re-en. Sec. 9335, R.C.M. 1935; amd. Sec. 4, Ch. 151, L. 1937; amd. Sec. 4, Ch. 3, L. 1939; R.C.M. 1947, 93-5002; amd. Sec. 14, Ch. 379, L. 1983; amd. Sec. 11, Ch. 3, L. 1985.

25-7-205. Persons drawn and approved to form jury. The first 12 persons, or such other number as will constitute the jury, who appear, as their names are drawn and called, and are approved as indifferent between the parties and not discharged or excused must be sworn and constitute the jury to try the issue.

History: En. Sec. 1052, C. Civ. Proc. 1895; re-en. Sec. 6733, Rev. C. 1907; re-en. Sec. 9336, R.C.M. 1921; re-en. Sec. 9336, R.C.M. 1935; R.C.M. 1947, 93-5003; amd. Sec. 93, Ch. 575, L. 1981.

Cross-References

Number of a trial jury, 3-15-106.

Alternate jurors, Rule 47(c), M.R.Civ.P. (see Title 25, ch. 20).

Juries — verdict, Rule 48, M.R.Civ.P. (see Title 25, ch. 20).

25-7-206. Procedure when insufficient number attend. (1) If a sufficient number of jurors duly drawn and notified do not attend to form a jury, the judge or the jury commissioner, pursuant to an order of the court to be entered in the minutes, shall, in the presence of two witnesses, draw a sufficient number of ballots from the box to complete the jury. The sheriff shall notify the persons thus drawn to attend immediately or at a time fixed by court. If for any reason a sufficient number of jurors to try the issue is not obtained from the persons notified, the court may make or order further drawings until a sufficient number is obtained.

(2) Each person so notified must attend at the time required by the notice and, unless excused by the court or set aside, must serve as a juror upon the trial. For a neglect or refusal to do so, he may be fined in the same manner as any other trial juror regularly drawn and notified. He is subject to the same exceptions and challenges as any other trial juror.

History: En. Sec. 1057, C. Civ. Proc. 1895; re-en. Sec. 6738, Rev. C. 1907; re-en. Sec. 9341, R.C.M. 1921; re-en. Sec. 9341, R.C.M. 1935; amd. Sec. 5, Ch. 151, L. 1937; amd. Sec. 5, Ch. 3, L. 1939; amd. Sec. 46, Ch. 344, L. 1977; R.C.M. 1947, 93-5008; amd. Sec. 15, Ch. 379, L. 1983; amd. Sec. 12, Ch. 3, L. 1985.

Cross-References

Failure of juror to attend as contempt, 3-1-501.

Record of attendance to be kept by clerk, 3-5-510.

Attachment and fine for failure to attend, 3-15-321.

Notice to jurors, 3-15-505.

25-7-207. Oath of jury. As soon as the jury is completed, an oath must be administered to the jurors, in substance, that they and each of them will well and truly try the matter in issue between ...., the plaintiff, and ...., the defendant, and render a true verdict according to the evidence.

History: En. Sec. 132, p. 69, Bannack Stat.; re-en. Sec. 160, p. 164, L. 1867; re-en. Sec. 196, p. 66, Cod. Stat. 1871; re-en. Sec. 247, p. 100, L. 1877; re-en. Sec. 247, 1st Div. Rev. Stat. 1879; re-en. Sec. 256, 1st Div. Comp. Stat. 1887; amd. Sec. 1064, C. Civ. Proc. 1895; re-en. Sec. 6745, Rev. C. 1907; re-en. Sec. 9348, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 604; R.C.M. 1947, 93-5015.

Cross-References

Alternate juror to take oath, Rule 47(c), M.R.Civ.P. (see Title 25, ch. 20).

25-7-208. Ballots of jurors who have been sworn. The ballots with the names of the jurors so sworn must be then deposited in another box and there kept apart from the other ballots with the names of jurors until that jury is discharged. After the jury is discharged, the ballots with the names of the jurors thereon must be returned to the box from which they were first taken.

History: Ap. p. Sec. 1053, C. Civ. Proc. 1895; re-en. Sec. 6734, Rev. C. 1907; amd. Sec. 12, Ch. 35, L. 1919; re-en. Sec. 9337, R.C.M. 1921; re-en. Sec. 9337, R.C.M. 1935; Sec. 93-5004,

R.C.M. 1947; Ap. p. Sec. 1054, C. Civ. Proc. 1895; re-en. Sec. 6735, Rev. C. 1907; amd. Sec. 13, Ch. 35, L. 1919; re-en. Sec. 9338, R.C.M. 1921; re-en. Sec. 9338, R.C.M. 1935; Sec. 93-5005, R.C.M. 1947; R.C.M. 1947, 93-5004, 93-5005(part); amd. Sec. 16, Ch. 379, L. 1983.

Cross-References

Duty of clerk — jury box, 3-15-404.

25-7-209. Ballots of jurors not sworn. The ballot with the name of a juror who is absent when his name is drawn or called or is set aside or excused from serving on that trial must be again returned to the box containing the undrawn ballots as soon as the jury is sworn.

History: En. Sec. 1055, C. Civ. Proc. 1895; re-en. Sec. 6736, Rev. C. 1907; amd. Sec. 14, Ch. 35, L. 1919; re-en. Sec. 9339, R.C.M. 1921; re-en. Sec. 9339, R.C.M. 1935; R.C.M. 1947, 93-5006; amd. Sec. 17, Ch. 379, L. 1983.

Cross-References

Duty of clerk — jury box, 3-15-404.

25-7-210. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. Sec. 1, Ch. 5, L. 1935; re-en. Sec. 8927.1, R.C.M. 1935; R.C.M. 1947, 93-1811.

25-7-211 through 25-7-220 reserved.

25-7-221. Challenges to jurors and the jury. (1) Each party may challenge the jury or jurors as follows:

(a) the panel or array;
(b) for cause;
(c) peremptory.

(2) Challenges to individual jurors are for cause or peremptory.

History: En. Sec. 133, p. 69, Bannack Stat.; re-en. Sec. 161, p. 164, L. 1867; amd. Sec. 197, p. 66, Cod. Stat. 1871; amd. Sec. 248, p. 100, L. 1877; amd. Sec. 248, 1st Div. Rev. Stat. 1879; re-en. Sec. 257, 1st Div. Comp. Stat. 1887; re-en. Sec. 1059, C. Civ. Proc. 1895; re-en. Sec. 6740, Rev. C. 1907; re-en. Sec. 9343, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 301; re-en. Sec. 9343, R.C.M. 1935; amd. Sec. 1, Ch. 300, L. 1971; R.C.M. 1947, 93-5010(part).

Cross-References

Manner of selection and order of examination of jurors, Rule 47(b), M.R.Civ.P. (see Title 25, ch. 20).

Selecting a jury in criminal cases, Title 46, ch. 16, part 3.

25-7-222. Challenges to the array or panel. (1) A challenge to the array or panel may be made and the whole array or panel set aside by the court when the jury was not selected, drawn, summoned, or notified as prescribed by law. It is not a valid objection to a jury that it contains none of the jurors originally returned to the court or is only partially composed of such jurors.

(2) There can be only one challenge on a side to the array or panel, which may be made by one or more of the parties.

History: Ap. p. Sec. 1058, C. Civ. Proc. 1895; re-en. Sec. 6739, Rev. C. 1907; re-en. Sec. 9342, R.C.M. 1921; re-en. Sec. 9342, R.C.M. 1935; Sec. 93-5009, R.C.M. 1947; Ap. p. Sec. 133, p. 69, Bannack Stat.; re-en. Sec. 161, p. 164, L. 1867; amd. Sec. 197, p. 66, Cod. Stat. 1871; amd. Sec. 248, p. 100, L. 1877; amd. Sec. 248, 1st Div. Rev. Stat. 1879; re-en. Sec. 257, 1st Div. Comp. Stat. 1887; re-en. Sec. 1059, C. Civ. Proc. 1895; re-en. Sec. 6740, Rev. C. 1907; re-en. Sec. 9343, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 301; re-en. Sec. 9343, R.C.M. 1935; amd. Sec. 1, Ch. 300, L. 1971; Sec. 93-5010, R.C.M. 1947; R.C.M. 1947, 93-5009, 93-5010(part).

Cross-References

Jury lists, Title 3, ch. 15, part 4.

Trial juries in District Court, Title 3, ch. 15, part 5.

25-7-223. Challenges to jurors for cause. Challenges for cause may be taken on one or more of the following grounds:

(1) a want of any of the qualifications prescribed by this code to render a person competent as a juror;

(2) being the spouse of or related to a party by consanguinity or affinity within the sixth degree;

(3) standing in the relation of guardian and ward, debtor and creditor, employer and employee, or principal and agent to either party or being a partner in business with either party or surety on any bond or obligation for either party. However, a challenge for cause may not be taken because of debtor and creditor relation when the same arises solely:

(a) by reason of current bills of gas, water, electricity, or telephone; or

(b) because a prospective juror is a depositor of funds with a bank, savings and loan institution, credit union, or similar financial institution.

(4) having served as a juror or been a witness on a previous trial between the same parties for the same cause of action;

(5) interest on the part of the juror in the event of the action or in the main question involved in the action, except his interest as a member or citizen of a municipal corporation;

(6) having an unqualified opinion or belief as to the merits of the action;

(7) the existence of a state of mind in the juror evincing enmity against or bias in favor of either party.

History: En. Sec. 134, p. 70, Bannack Stat.; re-en. Sec. 162, p. 164, L. 1867; re-en. Sec. 198, p. 66, Cod. Stat. 1871; re-en. Sec. 249, p. 100, L. 1877; re-en. Sec. 249, 1st Div. Rev. Stat. 1879; re-en. Sec. 258, 1st Div. Comp. Stat. 1887; amd. Sec. 1060, C. Civ. Proc. 1895; re-en. Sec. 6741, Rev. C. 1907; re-en. Sec. 9344, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 602; re-en. Sec. 9344, R.C.M. 1935; amd. Sec. 1, Ch. 10, L. 1953; R.C.M. 1947, 93-5011; amd. Sec. 94, Ch. 575, L. 1981; amd. Sec. 1, Ch. 106, L. 1983.

Cross-References

Relationship by affinity, 1-1-219.

Manner of selection and order of examination of jurors, Rule 47(b), M.R.Civ.P. (see Title 25, ch. 20).

Agency, Title 28, ch. 10.

Suretyships, Title 28, ch. 11, part 4.

Debtor and creditor relationships, Title 31, ch. 2.

Partnerships, Title 35, ch. 10.

Employment defined, 39-2-101.

Marriage, Title 40, ch. 1.

Guardianships, Title 72, ch. 5.

25-7-224. Peremptory challenges to jurors. (1) Each party is entitled to four peremptory challenges, except as provided for under subsection (2).

(2) When a six-person jury is authorized by law, each side shall have two peremptory challenges. When the parties agree upon a jury consisting of a number of persons other than 6 or 12, they shall also agree in open court, with the approval of the court, upon the number of peremptory challenges to be allowed, not to exceed four.

(3) Peremptory challenges shall be taken as provided in Rule 47(b), M.R.Civ.P.

History: Ap.p. Sec. 133, p. 69, Bannack Stat.; re-en. Sec. 161, p. 164, L. 1867; amd. Sec. 197, p. 66, Cod. Stat. 1871; amd. Sec. 248, p. 100, L. 1877; amd. Sec. 248, 1st Div. Rev. Stat. 1879; re-en. Sec. 257, 1st Div. Comp. Stat. 1887; re-en. Sec. 1059, C. Civ. Proc. 1895; re-en. Sec. 6740, Rev. C. 1907; re-en. Sec. 9343, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 301; re-en. Sec. 9343, R.C.M. 1935; amd. Sec. 1, Ch. 300, L. 1971; Sec. 93-5010, R.C.M. 1947; Ap.p. Sec. 224, C. Civ. Proc. 1895; re-en. Sec. 6334, Rev. C. 1907; re-en. Sec. 8887, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 194; re-en. Sec. 8887, R.C.M. 1935; amd. Sec. 4, Ch. 203, L. 1939; amd. Sec. 1, Ch. 293, L. 1971; Sec. 93-1205, R.C.M. 1947; R.C.M. 1947, 93-1205(part), 93-5010(part); amd. Sec. 95, Ch. 575, L. 1981.

Cross-References

Number of a trial jury, 3-15-106.

Part 3

Order and Conduct of Trial by Jury

Part Cross-References

Powers of judicial officers, Title 3, ch. 1, part 4.

Order of criminal trial, Title 46, ch. 16, part 4.

25-7-301. Order of trial. When the jury has been sworn, the trial shall proceed in the following order unless the court, for good cause and special reason, otherwise directs:

(1) The party who has the burden of proof may briefly state his case and the evidence by which he expects to sustain it.

(2) The adverse party may then, or at the opening of his case, briefly state his defense and the evidence he expects to offer in support of it.

(3) The party who has the burden of proof shall first produce his evidence; the adverse party will then produce his evidence.

(4) The parties will then be confined to rebutting evidence unless the court, for good reasons in furtherance of justice, permits them to offer evidence in their original case.

(5) When the instructions have been passed upon and settled by the court and before the arguments of counsel to the jury have begun, the court shall charge the jury in writing, giving in such charge only such instructions as are passed upon and settled at such settlement. In charging the jury, the court shall give to it all matters of law which the court thinks necessary for the jury's information in rendering a verdict.

(6) When the jury has been charged, unless the case is submitted to the jury on either side or on both sides without argument, the party upon whom rests the burden of proof must commence and may conclude the argument. If several defendants having several defenses appear by different counsel, the court must determine their relative order in the evidence and argument. Counsel, in arguing the case to the jury, may argue and comment upon the law of the case as given in the instructions of the court, as well as upon the evidence in the case.

History: En. Sec. 1, Ch. 34, L. 1907; Sec. 6746, Rev. C. 1907; re-en. Sec. 9349, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 607, 608; re-en. Sec. 9349, R.C.M. 1935; amd. Sec. 84, Ch. 13, L. 1961; R.C.M. 1947, 93-5101; amd. Sec. 96, Ch. 575, L. 1981.

Cross-References

Evidence, Rule 43, M.R.Civ.P. (see Title 25, ch. 20).

Instructions to jury, Rule 51, M.R.Civ.P. (see Title 25, ch. 20).

Instructions to jury on how to evaluate evidence, 26-1-303.

Burdens of proof, Title 26, ch. 1, part 4.

Mode and order of interrogation and presentation, Rule 611, Montana Rules of Evidence (see Title 26, ch. 10).

25-7-302. Directed verdict when no issues of fact. Where, upon the trial of an issue by a jury, the case presents only questions of law, the judge may direct the jury to render a verdict in favor of the party entitled thereto.

History: En. Sec. 1104, C. Civ. Proc. Sec. 1895; re-en. Sec. 6761, Rev. C. 1907; re-en. Sec. 9364, R.C.M. 1921; re-en. Sec. 9364, R.C.M. 1935; R.C.M. 1947, 93-5205.

Cross-References
Issues defined, 25-7-101.
Motion for directed verdict, Rule 50(a), M.R.Civ.P. (see Title 25, ch. 20).

25-7-303. Activity of court during jury's absence. While the jury is absent, the court may adjourn from time to time in respect to other business, but it is nevertheless open for every purpose connected with the case submitted to the jury until a verdict is rendered or the jury discharged. The court may direct the jury to bring in a sealed verdict at the opening of the court in case of an agreement during a recess or adjournment for the day.

History: En. Sec. 142, p. 71, Bannack Stat.; re-en. Sec. 170, p. 166, L. 1867; re-en. Sec. 210, p. 68, Cod. Stat. 1871; re-en. Sec. 260, p. 103, L. 1877; re-en. Sec. 260, 1st Div. Rev. Stat. 1879; re-en. Sec. 269, 1st Div. Comp. Stat. 1887; amd. Sec. 1088, C. Civ. Proc. 1895; re-en. Sec. 6754, Rev. C. 1907; re-en. Sec. 9357, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 617; re-en. Sec. 9357, R.C.M. 1935; R.C.M. 1947, 93-5109.

Cross-References
Nonjudicial day, 3-1-302.

25-7-304. Procedure when a juror becomes sick. If, after the impaneling of the jury and before verdict, a juror becomes sick so as to be unable to perform his duty, the court may order him to be discharged. In that case, subject to the provisions of Rule 47(c), M.R.Civ.P., the trial may proceed with the other jurors or another juror may be sworn and the trial may begin anew or the jury may be discharged and a new jury then or afterward impaneled.

History: En. Sec. 136, p. 70, Bannack Stat.; amd. Sec. 164, p. 165, L. 1867; re-en. Sec. 205, p. 68, Cod. Stat. 1871; re-en. Sec. 255, p. 103, L. 1877; re-en. Sec. 255, 1st Div. Rev. Stat. 1879; re-en. Sec. 264, 1st Div. Comp. Stat. 1887; re-en. Sec. 1086, C. Civ. Proc. 1895; re-en. Sec. 6752, Rev. C. 1907; re-en. Sec. 9355, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 615; re-en. Sec. 9355, R.C.M. 1935; R.C.M. 1947, 93-5107; amd. Sec. 97, Ch. 575, L. 1981.

Cross-References
Alternate juror, Rule 47(c), M.R.Civ.P. (see Title 25, ch. 20).

25-7-305. Procedure when jury prevented from giving verdict. In all cases where the jury is discharged or prevented from giving a verdict by reason of accident or other cause during the progress of the trial or after the case is submitted to it, the action may be again tried immediately or at a future time, as the court may direct.

History: En. Sec. 141, p. 71, Bannack Stat.; amd. Sec. 169, p. 166, L. 1867; re-en. Sec. 209, p. 68, Cod. Stat. 1871; re-en. Sec. 259, p. 104, L. 1877; re-en. Sec. 259, 1st Div. Rev. Stat. 1879; re-en. Sec. 268, 1st Div. Comp. Stat. 1887; re-en. Sec. 1087, C. Civ. Proc. 1895; re-en. Sec. 6753, Rev. C. 1907; re-en. Sec. 9356, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 616; re-en. Sec. 9356, R.C.M. 1935; R.C.M. 1947, 93-5108.

Part 4

Conduct of Jury

Part Cross-References
New trial for jury misconduct, 25-11-102.
Conduct of jury in criminal proceedings, Title 46, ch. 16, part 5.

25-7-401. View by jury of the premises. When, in the opinion of the court, it is proper for the jury to have a view of the property which is the subject of litigation or of the place at which any material fact occurred, it may order the jurors to be conducted in a body, under the charge of an officer and one person representing each party, to the place, which shall be shown to them by the persons appointed by the court for that purpose. While the jury is thus absent, no person other than the persons so appointed shall speak to it on any subject connected with the trial, and such persons shall not speak to the jury upon any matters connected with the subject of the action but may point out to the jury the property in litigation or the place at which any material fact occurred.

History: **En. Sec. 204, p. 68, Cod. Stat. 1871; re-en. Sec. 254, p. 103, L. 1877; re-en. Sec. 254, 1st Div. Rev. Stat. 1879; re-en. Sec. 263, 1st Div. Comp. Stat. 1887; amd. Sec. 1081, C. Civ. Proc. 1895; re-en. Sec. 6747, Rev. C. 1907; re-en. Sec. 9350, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 610; re-en. Sec. 9350, R.C.M. 1935; R.C.M. 1947, 93-5102.**

25-7-402. Admonition when jury permitted to separate. If the jurors are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with or suffer themselves to be addressed by any other person on any subject of the trial and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

History: **En. Sec. 263, p. 104, L. 1877; re-en. Sec. 263, 1st Div. Rev. Stat. 1879; re-en. Sec. 272, 1st Div. Comp. Stat. 1887; re-en. Sec. 1082, C. Civ. Proc. 1895; re-en. Sec. 6748, Rev. C. 1907; re-en. Sec. 9351, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 611; re-en. Sec. 9351, R.C.M. 1935; R.C.M. 1947, 93-5103.**

Cross-References

Alternate juror not to join in deliberations, Rule 47(c), M.R.Civ.P. (see Title 25, ch. 20).

Offense by juror for receiving unauthorized communication, 45-7-102.

25-7-403. Conduct of jury after case submitted to it. When the case is finally submitted to the jury, it may decide in court or retire for deliberation. If the jurors retire, they must be kept together in some convenient place, under charge of an officer, until at least two-thirds of them agree upon a verdict or are discharged by the court. Unless by order of the court, the officer having them under his charge must not suffer any communication to be made to them or make any himself, except to ask them if they or two-thirds of them are agreed upon a verdict; and he must not, before their verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

History: **En. Sec. 138, p. 71, Bannack Stat.; re-en. Sec. 166, p. 165, L. 1867; re-en. Sec. 206, p. 68, Cod. Stat. 1871; re-en. Sec. 256, p. 103, L. 1877; re-en. Sec. 256, 1st Div. Rev. Stat. 1879; re-en. Sec. 265, 1st Div. Comp. Stat. 1887; amd. Sec. 1084, C. Civ. Proc. 1895; re-en. Sec. 6750, Rev. C. 1907; re-en. Sec. 9353, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 613; re-en. Sec. 9353, R.C.M. 1935; R.C.M. 1947, 93-5105.**

Cross-References

Number in trial jury, 3-15-106.

Alternate juror not to join in deliberations, Rule 47(c), M.R.Civ.P. (see Title 25, ch. 20).

Bribery and corrupt influence, Title 45, ch. 7, part 1.

Official misconduct, Title 45, ch. 7, part 4.

25-7-404. Papers which may be taken into jury room. Upon retiring for deliberation, the jurors may take with them all papers which have been received as evidence in the cause except depositions or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession. They may also take with them notes of the testimony or other proceedings on the trial taken by themselves or any of them but none taken by any other person.

History: **En. Sec. 139, p. 71, Bannack Stat.; re-en. Sec. 167, p. 166, L. 1867; amd. Sec. 207, p. 68, Cod. Stat. 1871; re-en. Sec. 257, p. 103, L. 1877; re-en. Sec. 257, 1st Div. Rev. Stat. 1879;**

re-en. Sec. 266, 1st Div. Comp. Stat. 1887; amd. Sec. 1083, C. Civ. Proc. 1895; re-en. Sec. 6749, Rev. C. 1907; re-en. Sec. 9352, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 612; re-en. Sec. 9352, R.C.M. 1935; R.C.M. 1947, 93-5104.

25-7-405. Jury's request for further information. After the jury has retired for deliberation, if there be a disagreement among the jurors as to any part of the testimony or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of or after notice to the parties or counsel. Such information must be given in writing or taken down by the stenographer.

History: En. Sec. 140, p. 71, Bannack Stat.; amd. Sec. 168, p. 166, L. 1867; re-en. Sec. 208, p. 68, Cod. Stat. 1871; re-en. Sec. 258, p. 103, L. 1877; re-en. Sec. 258, 1st Div. Rev. Stat. 1879; re-en. Sec. 267, 1st Div. Comp. Stat. 1887; amd. Sec. 1085, C. Civ. Proc. 1895; re-en. Sec. 6751, Rev. C. 1907; re-en. Sec. 9354, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 614; re-en. Sec. 9354, R.C.M. 1935; R.C.M. 1947, 93-5106.

Part 5

Jury's Verdict

Part Cross-References

Receiving verdict and giving instructions on nonjudicial days, 3-1-302.

Jury prevented from giving verdict, 25-7-305.

Verdict vacated upon granting of new trial, 25-11-102.

Juries — verdict, Rule 48, M.R.Civ.P. (see Title 25, ch. 20).

Special verdicts and interrogatories, Rule 49, M.R.Civ.P. (see Title 25, ch. 20).

Motion for directed verdict and judgment notwithstanding the verdict, Rule 50, M.R.Civ.P. (see Title 25, ch. 20).

Verdict in criminal proceedings, Title 46, ch. 16, part 6.

25-7-501. Return of verdict — polling the jury. (1) When the jurors or two-thirds of them have agreed upon a verdict, they must be conducted into court, their names called by the clerk, and the verdict rendered by their foreman. The verdict must be in writing and signed by the foreman and must be read by the clerk to the jury, and the inquiry made whether it is their verdict.

(2) Either party may require the jury to be polled, which is done by the court or clerk asking each juror if it is his verdict. If upon such inquiry or polling more than one-third of the jurors disagree thereto, the jury must be sent out again, but if no such disagreement be expressed, the verdict is complete and the jury discharged from the case.

History: En. Sec. 143, p. 72, Bannack Stat.; re-en. Sec. 171, p. 166, L. 1867; re-en. Sec. 211, p. 69, Cod. Stat. 1871; amd. Sec. 261, p. 104, L. 1877; re-en. Sec. 261, 1st Div. Rev. Stat. 1879; re-en. Sec. 270, 1st Div. Comp. Stat. 1887; amd. Sec. 1089, C. Civ. Proc. 1895; re-en. Sec. 6755, Rev. C. 1907; re-en. Sec. 9358, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 618; re-en. Sec. 9358, R.C.M. 1935; R.C.M. 1947, 93-5110.

Cross-References

Number of a trial jury, 3-15-106.

25-7-502. Content of verdict — action or counterclaim for recovery of money. When a verdict is found for the plaintiff in an action for the recovery of money or for the defendant when a counterclaim for the recovery of money is established exceeding the amount of the plaintiff's claim as established, the jury must also find the amount of the recovery.

History: En. Sec. 149, p. 73, Bannack Stat.; re-en. Sec. 176, p. 167, L. 1867; re-en. Sec. 216, p. 70, Cod. Stat. 1871; re-en. Sec. 266, p. 105, L. 1877; re-en. Sec. 266, 1st Div. Rev. Stat. 1879;

re-en. Sec. 276, 1st Div. Comp. Stat. 1887; amd. Sec. 1102, C. Civ. Proc. 1895; re-en. Sec. 6759, Rev. C. 1907; re-en. Sec. 9362, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 626; re-en. Sec. 9362, R.C.M. 1935; R.C.M. 1947, 93-5203.

Cross-References

Counterclaim and cross-claim, Rule 13, M.R.Civ.P. (see Title 25, ch. 20).

25-7-503. Content of verdict — action for recovery of personal property. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff or the defendant, by his answer, claim a return thereof, the jury, if its verdict be in favor of the plaintiff or if, being in favor of the defendant, it also finds that he is entitled to a return thereof, shall find the value of the property (but failure to find all the facts mentioned in this section shall not invalidate the verdict) and may at the same time assess the damages, if they are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

History: En. Sec. 150, p. 73, Bannack Stat.; re-en. Sec. 177, p. 167, L. 1867; re-en. Sec. 217, p. 70, Cod. Stat. 1871; re-en. Sec. 267, p. 105, L. 1877; re-en. Sec. 267, 1st Div. Rev. Stat. 1879; re-en. Sec. 277, 1st Div. Comp. Stat. 1887; re-en. Sec. 1103, C. Civ. Proc. 1895; re-en. Sec. 6760, Rev. C. 1907; re-en. Sec. 9363, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 627; re-en. Sec. 9363, R.C.M. 1935; R.C.M. 1947, 93-5204.

Cross-References

Claim and delivery, Title 27, ch. 17.

Part 6

Trial by the Court

Part Cross-References

Issues defined, types of issues, 25-7-101.

Findings by the court, Rule 52, M.R.Civ.P. (see Title 25, ch. 20).

Province of court and jury, Title 26, ch. 1, part 2.

Judicial notice of facts, Rule 201, Montana Rules of Evidence (see Title 26, ch. 10).

25-7-601. Waiver of findings of fact. The findings of fact may be waived by the several parties to an issue of fact by:

(1) failing to appear at the trial;

(2) consent in writing filed with the clerk;

(3) oral consent in open court entered in the minutes.

History: En. Sec. 1113, C. Civ. Proc. 1895; re-en. Sec. 6765, Rev. C. 1907; re-en. Sec. 9368, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 634; re-en. Sec. 9368, R.C.M. 1935; R.C.M. 1947, 93-5304.

Cross-References

Findings by the court, Rule 52, M.R.Civ.P. (see Title 25, ch. 20).

Default, Rule 55, M.R.Civ.P. (see Title 25, ch. 20).

25-7-602. Trial upon agreed statement of facts. When any cause is tried and submitted upon a written statement of facts agreed to by the parties or their attorneys, such statement shall have the effect of a special verdict or finding of facts and judgment shall be pronounced thereon as upon a special verdict or finding of facts. In such case, no finding of facts shall be made unless such statement shall fail to embrace all the facts proved and in issue, in which case any additional fact may be found upon evidence which is not repugnant to the agreed statement.

History: En. Sec. 1117, C. Civ. Proc. 1895; re-en. Sec. 6769, Rev. C. 1907; re-en. Sec. 9372, R.C.M. 1921; re-en. Sec. 9372, R.C.M. 1935; R.C.M. 1947, 93-5308.

Cross-References

Special verdicts, Rule 49, M.R.Civ.P. (see Title 25, ch. 20).

Judgments — costs, Rule 54, M.R.Civ.P. (see Title 25, ch. 20).

Submission of controversy without action, Title 27, ch. 7.

Declaratory judgments, Title 27, ch. 8.

Part 7

Referees

Part Cross-References

Contempt before referee, 3-1-512.

Fees of referee as allowable costs, 25-10-201.

Costs of postponement allowed, 25-10-203.

Masters as referees, powers, proceedings, report, Rule 53, M.R.Civ.P. (see Title 25, ch. 20).

Person holding property to appear before referee, 27-18-503.

Instructions from referee upon dishonor, 30-4-503.

Paternity hearing before referee, 40-6-111.

25-7-701. Oath of referee. Every referee, before acting as such, shall take and subscribe an oath or affirmation before some authorized officer, which shall be filed with the clerk of the court by which he is appointed, that he will honestly, impartially, and faithfully perform the duties of referee in the action or matter referred to him, as required by law, to the best of his knowledge and ability.

History: En. Sec. 224, p. 72, Cod. Stat. 1871; re-en. Sec. 275, p. 108, L. 1877; re-en. Sec. 275, 1st Div. Rev. Stat. 1879; re-en. Sec. 285, 1st Div. Comp. Stat. 1887; re-en. Sec. 1133, C. Civ. Proc. 1895; re-en. Sec. 6774, Rev. C. 1907; re-en. Sec. 9377, R.C.M. 1921; re-en. Sec. 9377, R.C.M. 1935; R.C.M. 1947, 93-5404.

Cross-References

Officers who may administer oaths, 1-6-101.

Appointment of referees, Rule 53(a), M.R.Civ.P. (see Title 25, ch. 20).

25-7-702. Grounds for objection to appointment of referee. Either party may object to the appointment of any person as referee on the same grounds that he might object to him as a trial juror, as provided in 25-7-223.

History: En. Sec. 185, p. 169, L. 1867; re-en. Sec. 225, p. 72, Cod. Stat. 1871; re-en. Sec. 276, p. 109, L. 1877; re-en. Sec. 276, 1st Div. Rev. Stat. 1879; re-en. Sec. 286, 1st Div. Comp. Stat. 1887; en. Sec. 1137, C. Civ. Proc. 1895; re-en. Sec. 6778, Rev. C. 1907; re-en. Sec. 9381, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 641; re-en. Sec. 9381, R.C.M. 1935; R.C.M. 1947, 93-5408.

Cross-References

Appointment of referee, Rule 53(a), M.R.Civ.P. (see Title 25, ch. 20).

25-7-703. Procedure upon objection. The objections taken to the appointment of any person as referee must be heard and disposed of by the court. Affidavits may be read and witnesses examined as to such objections.

History: En. Sec. 186, p. 170, L. 1867; re-en. Sec. 226, p. 73, Cod. Stat. 1871; re-en. Sec. 277, p. 109, L. 1877; re-en. Sec. 277, 1st Div. Rev. Stat. 1879; re-en. Sec. 287, 1st Div. Comp. Stat. 1887; re-en. Sec. 1138, C. Civ. Proc. 1895; re-en. Sec. 6779, Rev. C. 1907; re-en. Sec. 9382, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 642; re-en. Sec. 9382, R.C.M. 1935; R.C.M. 1947, 93-5409.

CHAPTER 8

DEPOSIT IN COURT — DELIVERY TO PARTY

Part 1 — General Provisions

25-8-101. When court may order deposit or delivery.
25-8-102. Enforcement of court's order.
25-8-103. With whom money deposited.
25-8-104. Safekeeping of deposit by county treasurer.

Chapter Cross-References

Costs when money deposited with court, 25-10-107.

Interpleader by substitution with deposit, Rule 22(b), M.R.Civ.P. (see Title 25, ch. 20).

Deposits in court, Rule 67, M.R.Civ.P. (see Title 25, ch. 20).

Appeal from order, Rule 1, M.R.App.P. (see Title 25, ch. 21).

Part 1

General Provisions

25-8-101. When court may order deposit or delivery. When it is admitted by the pleading or shown upon the examination of a party that he has in his possession or under his control any money or other thing capable of delivery which, being the subject of the litigation, is held by him as trustee for another party or which belongs or is due to another party, the court may order the same, upon motion, to be deposited in court or delivered to such party upon such conditions as may be just, subject to the further direction of the court.

History: En. Sec. 115, p. 66, Bannack Stat.; re-en. Sec. 142, p. 160, L. 1867; re-en. Sec. 178, p. 61, Cod. Stat. 1871; re-en. Sec. 227, p. 95, L. 1877; re-en. Sec. 227, 1st Div. Rev. Stat. 1879; re-en. Sec. 235, 1st Div. Comp. Stat. 1887; amd. Sec. 970, C. Civ. Proc. 1895; re-en. Sec. 6705, Rev. C. 1907; re-en. Sec. 9308, R.C.M. 1921; Cal. C. Civ. Proc. 572; re-en. Sec. 9308, R.C.M. 1935; R.C.M. 1947, 93-4501.

Cross-References

Trustee defined, 72-20-104, 72-20-105, 72-21-104, 72-25-102.

25-8-102. Enforcement of court's order. Where the court directs a deposit or delivery of money or where a judgment directs a party to make a deposit or delivery or to convey real property, if the direction is disobeyed, the court, besides punishing the disobedience as a contempt, may by order require the sheriff to take and deposit or deliver the money or other personal property or to convey the real property in conformity with the direction of the court.

History: En. Sec. 229, p. 95, L. 1877; re-en. Sec. 229, 1st Div. Rev. Stat. 1879; re-en. Sec. 237, 1st Div. Comp. Stat. 1887; amd. Sec. 972, C. Civ. Proc. 1895; re-en. Sec. 6707, Rev. C. 1907; re-en. Sec. 9310, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 574; re-en. Sec. 9310, R.C.M. 1935; R.C.M. 1947, 93-4504.

Cross-References

Judgment requiring the performance of specific acts, 25-13-203.

25-8-103. With whom money deposited. (1) Whenever moneys are paid into or deposited in court, the same shall be delivered to the clerk in person or to such of his deputies as shall be specially authorized by his appointment in writing to receive the same. He must, unless otherwise directed by law, deposit it with the county treasurer to be held by him subject to the order of the court.

(2) Such appointment shall be filed with the county treasurer, who shall exhibit it and give to each person applying for the same a certified copy of the same. It shall be in force until a revocation in writing is filed with the county treasurer, who shall thereupon write "revoked" in ink across the face of the appointment.

History: **En. Sec. 3443, C. Civ. Proc. 1895; re-en. Sec. 8057, Rev. C. 1907; re-en. Sec. 10701, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2104; re-en. Sec. 10701, R.C.M. 1935; R.C.M. 1947, 93-4503(part).**

Cross-References
Duties of County Treasurer, 7-6-2111.

25-8-104. Safekeeping of deposit by county treasurer. The treasurer shall keep each fund distinct and open an account with each. For the safekeeping of the money deposited with the treasurer, his official bond shall be security.

History: **Ap. p. Sec. 3443, C. Civ. Proc. 1895; re-en. Sec. 8057, Rev. C. 1907; re-en. Sec. 10701, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2104; re-en. Sec. 10701, R.C.M. 1935; Sec. 93-4503, R.C.M. 1947; Ap. p. Sec. 228, p. 95, L. 1877; re-en. Sec. 228, 1st. Div. Rev. Stat. 1879; re-en. Sec. 236, 1st Div. Comp. Stat. 1887; amd. Sec. 971, C. Civ. Proc. 1895; re-en. Sec. 6706, Rev. C. 1907; re-en. Sec. 9309, R.C.M.1921; Cal. C. Civ. Proc. Sec. 573; re-en. Sec. 9309, R.C.M. 1935; Sec. 93-4502, R.C.M. 1947; R.C.M. 1947, 93-4502(part), 93-4503(part).**

Cross-References
Official bonds, Title 2, ch. 9, part 5.
Duties of County Treasurer, 7-6-2111.

CHAPTER 9

JUDGMENT

Part 1 — General Provisions

25-9-101. Judgment to be on the merits.
25-9-102. Judgment for or against married person.
25-9-103. Death of party after verdict, no lien.
25-9-104. Procedure after judgment on an issue of law.
25-9-105. Validation of defective judgments affecting realty.

Part 2 — Contents of Judgment

25-9-201. Whose rights determined in judgment.
25-9-202. Designation in judgment of principal debtors and sureties.
25-9-203. How amount expressed.
25-9-204. Clerk to include interest in judgment.
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Part 3 — Entry of Judgment and Satisfaction—Lien

25-9-301. Docketing of judgment — lien.
25-9-302. Filing of transcript of docket in another county.
25-9-303. Filing of transcript of docket of federal court.

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25-9-311. Entry of satisfaction of judgment in docket.

Part 4 — Periodic Payment of Certain Future Damages

25-9-401. Definitions.
25-9-402. Findings by trier of fact — civil actions.
25-9-403. Request for periodic payment of future damages.
25-9-404. Payment of attorney fees.
25-9-405. Assignment of periodic installments.
25-9-406. Failure to pay — penalty.

Chapter Cross-References

Power of court to compel obedience, 3-1-111.

Disobedience as contempt, 3-1-501.

Judgments of contempt conclusive, 3-1-523.

Territorial extent, 3-5-312.

Judgment book, 3-5-507.

Judgments — costs, Rule 54, M.R.Civ.P. (see Title 25, ch. 20).

Default judgment, Rule 55, M.R.Civ.P. (see Title 25, ch. 20).

Summary judgment, Rule 56, M.R.Civ.P. (see Title 25, ch. 20).

Declaratory judgments, Rule 57, M.R.Civ.P. (see Title 25, ch. 20).

Power of court to amend judgment on motion for new trial, Rule 59(a), M.R.Civ.P. (see Title 25, ch. 20).

Motion to alter or amend judgment, Rule 59(g), M.R.Civ.P. (see Title 25, ch. 20).

Relief from judgment or order, Rule 60, M.R.Civ.P. (see Title 25, ch. 20).

Amending judgment not required for harmless error, Rule 61, M.R.Civ.P. (see Title 25, ch. 20).

Stay of proceedings to enforce a judgment, Rule 62, M.R.Civ.P. (see Title 25, ch. 20).

Offer of judgment, Rule 68, M.R.Civ.P. (see Title 25, ch. 20).

Judgment for specific acts — vesting title, Rule 70, M.R.Civ.P. (see Title 25, ch. 20).

Appeal of judgments, Rule 72, M.R.Civ.P. (see Title 25, ch. 20).

Part 1

General Provisions

25-9-101. Judgment to be on the merits. In every case, judgment must be rendered on the merits, except as provided in Rule 41, M.R.Civ.P.

History: En. Sec. 122, p. 68, Bannack Stat.; re-en. Sec. 149, p. 162, L. 1867; re-en. Sec. 185, p. 63, Cod. Stat. 1871; re-en. Sec. 235, p. 96, L. 1877; re-en. Sec. 235, 1st Div. Rev. Stat. 1879; re-en. Sec. 243, 1st Div. Comp. Stat. 1887; re-en. Sec. 1005, C. Civ. Proc. 1895; re-en. Sec. 6715, Rev. C. 1907; re-en. Sec. 9318, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 582; re-en. Sec. 9318, R.C.M. 1935; R.C.M. 1947, 93-4706.

25-9-102. Judgment for or against married person. Judgment for or against a married person may be rendered and enforced as if such person were single.

History: En. Sec. 1006, C. Civ. Proc. 1895; re-en. Sec. 6716, Rev. C. 1907; re-en. Sec. 9319, R.C.M. 1921; re-en. Sec. 9319, R.C.M. 1935; amd. Sec. 54, Ch. 535, L. 1975; R.C.M. 1947, 93-4707.

Cross-References

Capacity of married person to be a party, 25-5-201.

Joint interests, obligations, and powers of husband and wife, Title 40, ch. 2, part 1.

25-9-103. Death of party after verdict, no lien. If a party die after a verdict or decision upon any issue of fact and before judgment, the court may nevertheless render judgment thereon. Such a judgment is not a lien on the real property of the deceased party but is payable in the course of administration on his estate.

History: En. Sec. 178, p. 78, Bannack Stat.; amd. Sec. 202, p. 174, L. 1867; re-en. Sec. 242, p. 77, Cod. Stat. 1871; re-en. Sec. 293, p. 116, L. 1877; re-en. Sec. 293, 1st Div. Rev. Stat. 1879; re-en. Sec. 305, 1st Div. Comp. Stat. 1887; re-en. Sec. 1195, C. Civ. Proc. 1895; re-en. Sec. 6805, Rev. C. 1907; re-en. Sec. 9408, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 669; re-en. Sec. 9408, R.C.M. 1935; R.C.M. 1947, 93-5706.

Cross-References

Substitution of parties by death, Rule 25(a), M.R.Civ.P. (see Title 25, ch. 20).

Right to bring action or assert defense, Title 27, ch. 1, part 5.

Estates and probate proceedings, Title 72.

25-9-104. Procedure after judgment on an issue of law. On a judgment for the plaintiff upon an issue of law, he may proceed in the manner prescribed by Rule 55(a) and (b), M.R.Civ.P., upon the failure of the defendant to answer. If judgment be for the defendant upon an issue of law and the taking of an account or the proof of any fact be necessary to enable the court to complete the judgment, a reference may be ordered, as provided in Rule 55(b).

History: En. Sec. 272, p. 107, L. 1877; re-en. Sec. 272, 1st Div. Rev. Stat. 1879; re-en. Sec. 282, 1st Div. Comp. Stat. 1887; re-en. Sec. 1118, C. Civ. Proc. 1895; re-en. Sec. 6770, Rev. C. 1907; re-en. Sec. 9373, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 636; re-en. Sec. 9373, R.C.M. 1935; R.C.M. 1947, 93-5309.

Cross-References

Referees, Title 25, ch. 7, part 7.

Masters, Rule 53, M.R.Civ.P. (see Title 25, ch. 20).

25-9-105. Validation of defective judgments affecting realty. Any judgment or decree of any court of this state affecting real property, provided that no action is now pending to set aside any such judgment or decree, which was, prior to January 1, 1973, copied into the proper book kept in the office of the clerk of the district court, and certified copy of which judgment or decree was, previous to July 1, 1973, recorded in the proper book kept in the office of the county clerk and recorder shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality, or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired; and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality, or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree or of the record thereof may be read in evidence with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

History: En. Sec. 1, Ch. 146, L. 1973; R.C.M. 1947, 93-5710.5.

Cross-References

Admission of duplicates, copies of certain entries, Rule 1003, Montana Rules of Evidence (see Title 26, ch. 10).

Public records, Rule 1005, Montana Rules of Evidence (see Title 26, ch. 10).

Recording real property transfers, Title 70, ch. 21.

Part 2

Contents of Judgment

Part Cross-References

What considered adjudged in a judgment, 26-3-102.

25-9-201. Whose rights determined in judgment. Subject to the provisions of Rule 54(b), M.R.Civ.P., judgment may be given for or against one or more of several plaintiffs and for or against one or more of several defendants, and it may, when the justice of the case requires, determine the ultimate rights of the parties on each side as between themselves.

History: En. Sec. 118, p. 67, Bannack Stat.; re-en. Sec. 145, p. 161, L. 1867; re-en. Sec. 181, p. 62, Cod. Stat. 1871; re-en. Sec. 231, p. 95, L. 1877; re-en. Sec. 231, 1st. Div. Rev. Stat. 1879; re-en. Sec. 239, 1st Div. Comp. Stat. 1887; re-en. Sec. 1001, C. Civ. Proc. 1895; re-en. Sec. 6711, Rev. C. 1907; re-en. Sec. 9314, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 578; re-en. Sec. 9314, R.C.M. 1935; R.C.M. 1947, 93-4702(part); amd. Sec. 98, Ch. 575, L. 1981.

Cross-References

Interpleader, Rule 22, M.R.Civ.P. (see Title 25, ch. 20).

25-9-202. Designation in judgment of principal debtors and sureties. Upon the rendition of any judgment, if it shall be shown that one or more of the defendants against whom the judgment is to be rendered are principal debtors and others of the said defendants are sureties of such principal debtor, the court may order the judgment so to state.

History: En. Sec. 118, p. 67, Bannack Stat.; re-en. Sec. 145, p. 161, L. 1867; re-en. Sec. 181, p. 62, Cod. Stat. 1871; re-en. Sec. 231, p. 95, L. 1877; re-en. Sec. 231, 1st. Div. Rev. Stat. 1879; re-en. Sec. 239, 1st Div. Comp. Stat. 1887; re-en. Sec. 1001, C. Civ. Proc. 1895; re-en. Sec. 6711, Rev. C. 1907; re-en. Sec. 9314, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 578; re-en. Sec. 9314, R.C.M. 1935; R.C.M. 1947, 93-4702(part).

Cross-References

Principal bound when surety bound, 26-3-104.

Suretyship, Title 28, ch. 11, part 4.

25-9-203. How amount expressed. In judgments, the amount thereof must be computed and stated as near as may be in dollars and cents, rejecting fractions of a cent.

History: En. Sec. 3152, Pol. C. 1895; re-en. Sec. 2035, Rev. C. 1907; re-en. Sec. 4285, R.C.M. 1921; Cal. Pol. C. Sec. 3274; re-en. Sec. 4285, R.C.M. 1935; R.C.M. 1947, 93-4710(part).

Cross-References

Money of account, Title 30, ch. 12, part 6.

25-9-204. Clerk to include interest in judgment. The clerk must include in the judgment entered up by him any interest on the verdict or decision of the court, from the time it was rendered or made.

History: En. Sec. 482, p. 230, L. 1867; re-en. Sec. 558, p. 149, Cod. Stat. 1871; re-en. Sec. 500, p. 172, L. 1877; re-en. Sec. 500, 1st Div. Rev. Stat. 1879; re-en. Sec. 513, 1st Div. Comp. Stat. 1887; re-en. Sec. 1870, C. Civ. Proc. 1895; re-en. Sec. 7173, Rev. C. 1907; re-en. Sec. 9806, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1035; re-en. Sec. 9806, R.C.M. 1935; R.C.M. 1947, 93-8622(part).

Cross-References

Execution to include interest, 25-13-304.

Execution sale invalidated, 25-13-713.

Limitation on judgment against joint debtor, 25-15-106.

Interest on judgments, Rule 31, M.R.App.P. (see Title 25, ch. 21).

Interest on torts, 27-1-210.

Judgment when debt not yet due, 27-18-901.

25-9-205. Amount of interest. (1) Except as provided in subsection (2), interest is payable on judgments recovered in the courts of this state at the rate of 10% per annum and no greater rate. Such interest must not be compounded in any manner or form.

(2) Interest on a judgment recovered in the courts of this state involving a contractual obligation that specifies an interest rate must be paid at the rate specified in the contractual obligation.

History: **En. Sec. 2588, Civ. C. 1895; amd. Sec. 1, p. 125, L. 1899; re-en. Sec. 5214, Rev. C. 1907; re-en. Sec. 7729, R.C.M. 1921; Cal. Civ. C. Sec. 1920; amd. Sec. 1, Ch. 143, L. 1933; re-en. Sec. 7729, R.C.M. 1935; R.C.M. 1947, 47-128; amd. Sec. 1, Ch. 373, L. 1979; amd. Sec. 1, Ch. 649, L. 1979; Sec. 31-1-110, MCA 1979; redes. 25-9-205 by Code Commissioner, 1979.**

Cross-References

Execution of property against judgment debtor to include interest, 25-13-304.

Interest on torts, 27-1-210.

Validity of interest rate set by contract, 27-1-213.

Interest rates on loans of money, Title 31, ch. 1, part 1.

Part 3

Entry of Judgment and Satisfaction — Lien

Part Cross-References

"Judgment book" defined, 3-5-507.

Docket, 3-5-508.

Docket to be available for inspection, 3-5-509.

Execution of lien upon real property, 25-13-305.

Entry of judgment, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

25-9-301. Docketing of judgment — lien. (1) Immediately after the entry of the judgment in the judgment book, the clerk must make the proper entries of the judgment under appropriate heads in the docket kept by him.

(2) From the time the judgment is docketed, it becomes a lien upon all real property of the judgment debtor not exempt from execution in the county, owned by him at the time or which he may afterward acquire until the lien ceases. The lien continues for 6 years unless the judgment be previously satisfied.

History: **En. Sec. 180, p. 78, Bannack Stat.; en. Sec. 204, p. 174, L. 1867; re-en. Sec. 244, p. 77, Cod. Stat. 1871; amd. Sec. 1, p. 40, L. 1876; re-en. Sec. 295, p. 116, L. 1877; re-en. Sec. 295, 1st Div. Rev. Stat. 1879; re-en. Sec. 307, 1st Div. Comp. Stat. 1887; re-en. Sec. 1197, C. Civ. Proc. 1895; re-en. Sec. 6807, Rev. C. 1907; re-en. Sec. 9410, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 671; re-en. Sec. 9410, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, December 10, 1965, eff. January 1, 1966; R.C.M. 1947, 93-5708.**

Cross-References

Liens, Title 71, ch. 3.

25-9-302. Filing of transcript of docket in another county. A transcript of the original docket, certified by the clerk, may be filed with the district court clerk of any other county; and from the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time or which he may afterward and before the lien expires acquire. The lien continues for 6 years unless the judgment be previously satisfied.

History: **En. Sec. 181, p. 78, Bannack Stat.; re-en. Sec. 207, p. 175, L. 1867; re-en. Sec. 247, p. 78, L. 1871; en. Sec. 1, p. 40, L. 1876; re-en. Sec. 298, p. 117, L. 1877; re-en. Sec. 298, 1st Div. Rev. Stat. 1879; re-en. Sec. 310, 1st Div. Comp. Stat. 1887; amd. Sec. 1200, C. Civ. Proc. 1895; re-en. Sec. 6810, Rev. C. 1907; re-en. Sec. 9413, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 674; re-en. Sec. 9413, R.C.M. 1935; R.C.M. 1947, 93-5712.**

25-9-303. Filing of transcript of docket of federal court. A transcript of the original docket of any judgment rendered in the circuit or district court of the United States, ninth circuit, district of Montana, certified by the clerk of said court, may be filed with the district court clerk of any county; and from the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time or which he may afterward and before the lien expires acquire. The lien shall continue for 6 years unless the judgment be previously satisfied.

History: **En. Sec. 1, Ch. 14, L. 1907; re-en. Sec. 6812, Rev. C. 1907; re-en. Sec. 9415, R.C.M. 1921; re-en. Sec. 9415, R.C.M. 1935; R.C.M. 1947, 93-5714.**

25-9-304 through 25-9-310 reserved.

25-9-311. Entry of satisfaction of judgment in docket. Satisfaction of a judgment may be entered in the clerk's docket upon an execution returned satisfied or upon an acknowledgment of satisfaction filed with the clerk, made in the manner of an acknowledgment of a conveyance of real property by the judgment creditor or by his endorsement on the face or on the margin of the record of the judgment or by his attorney unless a revocation of his authority is filed. Whenever a judgment is satisfied in fact otherwise than upon an execution, the party or attorney must give such acknowledgment or make such endorsement, and upon motion, the court may compel it or may order the entry of satisfaction to be made without it.

History: **En. Sec. 182, p. 79, Bannack Stat.; amd. Sec. 208, p. 175, L. 1867; re-en. Sec. 248, p. 78, L. 1871; en. Sec. 299, p. 117, L. 1877; re-en. Sec. 299, 1st Div. Rev. Stat. 1879; re-en. Sec. 311, 1st Div. Comp. Stat. 1887; re-en. Sec. 1201, C. Civ. Proc. 1895; re-en. Sec. 6811, Rev. C. 1907; re-en. Sec. 9414, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 675; re-en. Sec. 9414, R.C.M. 1935; R.C.M. 1947, 93-5713.**

Cross-References

Execution of judgment, Title 25, ch. 13.

Part 4

Periodic Payment of Certain Future Damages

25-9-401. Definitions. In this part:

(1) "future damages" includes damages for future medical treatment, care, or custody, loss of future earnings, and future pain and suffering of the judgment creditor; and

(2) "periodic payment" means the payment of money to the judgment creditor at regular intervals.

History: **En. Sec. 1, Ch. 634, L. 1987.**

25-9-402. Findings by trier of fact — civil actions. In any action for personal injury, property damage, or wrongful death where liability is found after trial and in which $100,000 or more in future damages is awarded to the claimant, the trier of fact shall make a separate finding as to the amount of any future damages so awarded and state whether the amount of future damages has been reduced to present value.

History: **En. Sec. 2, Ch. 634, L. 1987.**

25-9-403. Request for periodic payment of future damages. (1) A party to an action for personal injury, property damage, or wrongful death in which $100,000 or more of future damages is awarded may, prior to the entry of judgment, request the court to enter a judgment ordering future damages to be paid in whole or in part by periodic payments rather than by a lump-sum payment. Upon such request, the court may enter an order for periodic payment of future damages if the court finds that such payment is in the best interests of the claimant. The total dollar amount of the ordered periodic payments must equal the total dollar amount of the future damages without a reduction to present value.

(2) A court ordering the payment of future damages by periodic payments shall make specific findings as to the dollar amount of periodic payments needed to compensate the judgment creditor for future damages and as to whether an order for periodic payment of future damages is in the best interests of the claimant.

(3) The judgment order must specify the recipient or recipients of periodic payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made.

(4) A court ordering periodic payment of future damages shall order that the payments be made, during the life of the judgment creditor or during the continuance of the compensable injury or disability of the judgment creditor, through the purchase of an inflation-indexed annuity approved by the court. The annuity must be in the form of an inflation-indexed annuity contract purchased from a qualified insurer that, in the most recent edition of A.M. Best, has an "A" (excellent) or higher rating and is in a class 7 or higher classification. The annuity also serves as any required supersedeas bond. Upon purchase of a court-approved annuity, the court may order that the judgment is satisfied and that the judgment debtor is discharged. If the judgment creditor dies before all periodic payments have been made, the remaining payments become the property of his estate.

History: **En. Sec. 3, Ch. 634, L. 1987.**

25-9-404. Payment of attorney fees. A judgment must order payment of attorney fees and litigation expenses separately from an order for periodic payments of future damages. The attorney fees and expenses must be paid either in a lump sum or by periodic payments pursuant to an agreement entered into between the claimant and his attorney. An agreement for the immediate lump-sum payment of that portion of the attorney fees incurred to recover future damages to be paid by periodic payments must be calculated on the basis of the present value of the future damages.

History: **En. Sec. 4, Ch. 634, L. 1987.**

25-9-405. Assignment of periodic installments. An assignment of or an agreement to assign any right to periodic installments for future damages contained in a judgment entered under this part is enforceable only as to amounts:

(1) to secure payment of alimony, maintenance, or child support; or

(2) for the costs of products, services, or accommodations provided or to be provided by the assignee for medical or other health care.

History: **En. Sec. 6, Ch. 634, L. 1987.**

25-9-406. Failure to pay — penalty. If the court finds that the insurer that sold the annuity to the judgment debtor has unjustifiably exhibited a continuing pattern of failing to make periodic payments, the court shall find the insurer in contempt of court and order the insurer to pay past-due payments and the judgment creditor's damages caused by the failure to make payments, including court costs and attorney fees.

History: **En. Sec. 5, Ch. 634, L. 1987.**

CHAPTER 10

COSTS

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Chapter Cross-References

Allocation of costs between counties, 25-2-205.

Costs, Rule 54(d), M.R.Civ.P. (see Title 25, ch. 20).

Entry of judgment not to be delayed for costs, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

Costs on appeal, Rule 33, M.R.App.P. (see Title 25, ch. 21).

Part 1

Imposition of Costs

25-10-101. When costs allowed, of course, to plaintiff. Costs are allowed, of course, to the plaintiff upon a judgment in his favor in the following cases:

(1) in an action for the recovery of real property or damages thereto;

(2) in an action to recover the possession of personal property where the value of the property exceeds $50; such value shall be determined by the jury, court, or referee by whom the action is tried;

(3) in an action for the recovery of money or damages, exclusive of interest, when plaintiff recovers over $50;

(4) in a special proceeding;

(5) in an action which involves the title or possession or right of possession of real estate; or the legality of any tax, impost, assessment, toll, or municipal fine; or quo warranto proceedings;

(6) in an action to foreclose a lien or pledge, to prevent or abate a nuisance, or for an injunction; or

(7) in an action for property damage arising out of the ownership, maintenance, or use of a motor vehicle if he is entitled to attorney's fees under 25-10-303.

History: En. Sec. 401, p. 126, Bannack Stat.; re-en. Sec. 470, p. 229, L. 1867; re-en. Sec. 546, p. 147, Cod. Stat. 1871; re-en. Sec. 482, p. 168, L. 1877; re-en. Sec. 482, 1st Div. Rev. Stat. 1879; amd. Sec. 10, p. 11, L. 1881; re-en. Sec. 495, 1st Div. Comp. Stat. 1887; en. Sec. 1851, C. Civ. Proc. 1895; re-en. Sec. 7154, Rev. C. 1907; re-en. Sec. 9787, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1022; re-en. Sec. 9787, R.C.M. 1935; R.C.M. 1947, 93-8602; amd. Sec. 1, Ch. 528, L. 1981.

Cross-References

Actions and special proceedings defined, 27-1-102.

No costs in agreed case prior to trial, 27-7-103.

Action for claim and delivery, Title 27, ch. 17.

Costs upon dissolution of injunction, 27-19-406.

Costs upon issuance of Writ of Mandamus, 27-26-402.

Costs in quo warranto proceedings, 27-28-205.

Forcible entry and unlawful detainer, Title 70, ch. 27.

Quieting title to real property, Title 70, ch. 28.

Costs on foreclosure of lien, 71-3-124.

25-10-102. When costs allowed, of course, to defendant. Costs must be allowed, of course, to the defendant upon a judgment in his favor in the actions mentioned in 25-10-101.

History: En. Sec. 472, p. 229, L. 1867; re-en. Sec. 548, p. 148, Cod. Stat. 1871; re-en. Sec. 484, p. 169, L. 1877; re-en. Sec. 484, 1st Div. Rev. Stat. 1879; re-en. Sec. 497, 1st Div. Comp.

Stat. 1887; amd. Sec. 1853, C. Civ. Proc. 1895; re-en. Sec. 7155, Rev. C. 1907; re-en. Sec. 9788, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1024; re-en. Sec. 9788, R.C.M. 1935; R.C.M. 1947, 93-8603.

25-10-103. When costs discretionary. Unless otherwise provided, in actions other than those mentioned in 25-10-101, costs may be allowed or not and, if allowed, may be apportioned between the parties on the same or adverse sides, in the discretion of the court, but no costs can be allowed in an action for the recovery of money or damages when the plaintiff fails to recover more than $50 or in an action to recover the possession of personal property when the value of the property is not more than $50.

History: En. Sec. 404, p. 127, Bannack Stat.; en. Sec. 473, p. 229, L. 1867; re-en. Sec. 549, p. 148, Cod. Stat. 1871; re-en. Sec. 485, p. 169, L. 1877; re-en. Sec. 485, 1st Div. Rev. Stat. 1879; amd. Sec. 11, p. 11, L. 1881; re-en. Sec. 498, 1st Div. Comp. Stat. 1887; amd. Sec. 1853, C. Civ. Proc. 1895; re-en. Sec. 7156, Rev. C. 1907; re-en. Sec. 9789, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1025; re-en. Sec. 9789, R.C.M. 1935; R.C.M. 1947, 93-8604; amd. Sec. 4, Ch. 402, L. 1979.

Cross-References

Actions and special proceedings defined, 27-1-102.

Costs in injunction proceedings, 27-19-406.

Costs in proceedings for Writ of Mandate, 27-26-402.

25-10-104. When costs of appeal discretionary. (1) In the following cases, the costs of appeal are in the discretion of the court:

(a) when a new trial is ordered;

(b) when a judgment is modified.

(2) In all other cases the successful party shall recover from the other party his costs.

History: En. Sec. 406, p. 127, Bannack Stat.; amd. Sec. 475, p. 229, L. 1867; re-en. Sec. 551, p. 148, Cod. Stat. 1871; re-en. Sec. 487, p. 169, L. 1877; re-en. Sec. 487, 1st Div. Rev. Stat. 1879; re-en. Sec. 500, 1st Div. Comp. Stat. 1887; amd. Sec. 1855, C. Civ. Proc. 1895; re-en. Sec. 7158, Rev. C. 1907; re-en. Sec. 9791, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1027; re-en. Sec. 9791, R.C.M. 1935; R.C.M. 1947, 93-8606.

Cross-References

How costs on appeal claimed, 25-10-503.

Appeal to Supreme Court, Title 25, ch. 12.

Costs, Rule 33, M.R.App.P. (see Title 25, ch. 21).

25-10-105. Costs of review other than by appeal. When the decision of a court of limited jurisdiction in a special proceeding is brought before a court of higher jurisdiction for a review in any other way than by appeal, the same costs must be allowed as in cases on appeal and may be collected by execution or in such manner as the court may direct, according to the nature of the case.

History: En. Sec. 411, p. 127, Bannack Stat.; re-en. Sec. 480, p. 230, L. 1867; re-en. Sec. 556, p. 149, Cod. Stat. 1871; re-en. Sec. 493, p. 170, L. 1877; re-en. Sec. 493, 1st Div. Rev. Stat. 1879; re-en. Sec. 506, 1st Div. Comp. Stat. 1887; re-en. Sec. 1860, C. Civ. Proc. 1895; re-en. Sec. 7163, Rev. C. 1907; re-en. Sec. 9796, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1032; re-en. Sec. 9796, R.C.M. 1935; R.C.M. 1947, 93-8611; amd. Sec. 10, Ch. 466, L. 1979.

Cross-References

Jurisdiction of Municipal Courts, 3-6-103.

Jurisdiction of Justices' Courts, 3-10-301 through 3-10-303, 25-31-101.

Extraordinary writs, Rule 17, M.R.App.P. (see Title 25, ch. 21).

Special proceedings defined, 27-1-102.

Certiorari, Title 27, ch. 25.

25-10-106. Several defendants not united in interest. When there are several defendants in the actions mentioned in 25-10-101, not united in interest and making separate defenses by separate answers, and plaintiff fails to recover judgment against all, the court must award costs to such of the defendants as have judgment in their favor.

History: **En. Sec. 474, p. 229, L. 1867; re-en. Sec. 550, p. 148, Cod. Stat. 1871; re-en. Sec. 486, p. 169, L. 1877; re-en. Sec. 486, 1st Div. Rev. Stat. 1879; re-en. Sec. 499, 1st Div. Comp. Stat. 1887; re-en. Sec. 1854, C. Civ. Proc. 1895; re-en. Sec. 7157, Rev. C. 1907; re-en. Sec. 9790, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1026; re-en. Sec. 9790, R.C.M. 1935; R.C.M. 1947, 93-8605.**

Cross-References

Multiple defendants jointly and severally liable, 27-1-703.

25-10-107. Costs when tender was made before commencement of action. When, in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action he tendered to the plaintiff the full amount to which he was entitled and thereupon deposits in court for plaintiff the amount so tendered and the allegation be found to be true, the plaintiff cannot recover costs but must pay costs to the defendant.

History: **En. Sec. 409, p. 127, Bannack Stat.; amd. Sec. 478, p. 229, L. 1867; re-en. Sec. 554, p. 148, Cod. Stat. 1871; re-en. Sec. 491, p. 170, L. 1877; re-en. Sec. 491, 1st Div. Rev. Stat. 1879; re-en. Sec. 504, 1st Div. Comp. Stat. 1887; re-en. Sec. 1858, C. Civ. Proc. 1895; re-en. Sec. 7161, Rev. C. 1907; re-en. Sec. 9794, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1030; re-en. Sec. 9794, R.C.M. 1935; R.C.M. 1947, 93-8609.**

25-10-108. Imposing costs on party acting as representative. In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or person expressly authorized by statute, costs may be recovered as in an action by and against a person prosecuting or defending in his own right; but such costs must, by the judgment, be made chargeable only upon the estate, fund, or party represented unless the court directs the same to be paid by the plaintiff or defendant personally for mismanagement or bad faith in the action or defense.

History: **En. Sec. 410, p. 127, Bannack Stat.; re-en. Sec. 479, p. 230, L. 1867; re-en. Sec. 555, p. 148, Cod. Stat. 1871; re-en. Sec. 492, p. 170, L. 1877; re-en. Sec. 492, 1st Div. Rev. Stat. 1879; re-en. Sec. 505, 1st Div. Comp. Stat. 1887; re-en. Sec. 1859, C. Civ. Proc. 1895; re-en. Sec. 7162, Rev. C. 1907; re-en. Sec. 9795, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1031; re-en. Sec. 9795, R.C.M. 1935; R.C.M. 1947, 93-8610.**

Cross-References

Right to bring action or assert defenses, Title 27, ch. 1, part 5.

Powers, duties, and compensation of personal representatives, Title 72, ch. 3, part 6.

Personal representative, Title 72, ch. 12, part 5.

Part 2

Allowable Costs

25-10-201. Costs generally allowable. A party to whom costs are awarded in an action is entitled to include in his bill of costs his necessary disbursements, as follows:

(1) the legal fees of witnesses, including mileage, or referees and other officers;

(2) the expenses of taking depositions;

(3) the legal fees for publication when publication is directed;

(4) the legal fees paid for filing and recording papers and certified copies thereof necessarily used in the action or on the trial;

(5) the legal fees paid stenographers for per diem or for copies;

(6) the reasonable expenses of printing papers for a hearing when required by a rule of court;

(7) the reasonable expenses of making transcript for the supreme court;

(8) the reasonable expenses for making a map or maps if required and necessary to be used on trial or hearing; and

(9) such other reasonable and necessary expenses as are taxable according to the course and practice of the court or by express provision of law.

History: En. Sec. 1866, C. Civ. Proc. 1895; re-en. Sec. 7169, Rev. C. 1907; re-en. Sec. 9802, R.C.M. 1921; re-en. Sec. 9802, R.C.M. 1935; R.C.M. 1947, 93-8618.

Cross-References

Salary and expenses of court reporters, 3-5-602.

Copies of proceedings, 3-5-604.

Cost of jury, 3-15-203, 3-15-205.

Fees of Clerk of District Court, 25-1-201.

Fee of court reporter, 25-1-202.

Alternative methods of service, Title 25, ch. 3, part 5.

Attorneys' fees, Title 25, ch. 10, part 3.

Service by publication, Rule 4D(5), M.R.Civ.P. (see Title 25, ch. 20).

Expenses for failure to attend deposition, Rule 30(g), M.R.Civ.P. (see Title 25, ch. 20).

Costs as sanctions for failure to make discovery, Rule 37, M.R.Civ.P. (see Title 25, ch. 20).

Costs for interpreters, Rule 43(f), M.R.Civ.P. (see Title 25, ch. 20).

Compensation of masters, Rule 53(a), M.R.Civ.P. (see Title 25, ch. 20).

Costs of affidavits made in bad faith, Rule 56(g), M.R.Civ.P. (see Title 25, ch. 20).

Offer of judgment, Rule 68, M.R.Civ.P. (see Title 25, ch. 20).

Witness fees, Title 26, ch. 2, part 5.

25-10-202. Costs of motion. Whenever a motion is sustained or overruled, the losing party must pay to the other $10 as costs. If a motion is withdrawn before the hearing, it must be considered overruled.

History: En. Sec. 1861, C. Civ. Proc. 1895; re-en. Sec. 7164, Rev. C. 1907; re-en. Sec. 9797, R.C.M. 1921; re-en. Sec. 9797, R.C.M. 1935; R.C.M. 1947, 93-8612; amd. Sec. 99, Ch. 575, L. 1981.

25-10-203. Costs of postponement. When an application is made to the court or referee to postpone a trial, the payment of costs occasioned by the postponement may be imposed, in the discretion of the court or referee, as a condition of granting the same.

History: En. Sec. 408, p. 127, Bannack Stat.; re-en. Sec. 477, p. 229, L. 1867; re-en. Sec. 553, p. 148, Cod. Stat. 1871; re-en. Sec. 490, p. 170, L. 1877; re-en. Sec. 490, 1st Div. Rev. Stat. 1879; re-en. Sec. 503, 1st Div. Comp. Stat. 1887; re-en. Sec. 1857, C. Civ. Proc. 1895; re-en. Sec. 7160, Rev. C. 1907; re-en. Sec. 9793, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1029; re-en. Sec. 9793, R.C.M. 1935; R.C.M. 1947, 93-8608.

Cross-References

Motion to postpone trial, Title 25, ch. 4, part 5.

25-10-204. Costs of transferring papers — change of venue. The costs and fees of transmitting the pleading and papers when an order is made transferring an action or proceeding for trial and of filing the papers anew must be paid by the party at whose instance the order was made; except that the party filing the complaint must pay all costs and fees of filing the papers anew and all costs and fees, including reasonable attorneys' fees to be fixed by the court, incurred by the defendant by reason of the change of venue motion and hearing when:

(1) the action is an action upon a contract, express or implied, for the direct payment of money and no claim contained in the complaint exceeds $1,000;

(2) the county designated in the complaint is not the proper county; and

(3) the plaintiff will not within 10 days after request stipulate for change of venue and defendant files a motion for such change and such motion is thereafter granted.

History: En. Sec. 64, p. 53, L. 1877; re-en. Sec. 64, 1st Div. Rev. Stat. 1879; re-en. Sec. 64, 1st Div. Comp. Stat. 1887; re-en. Sec. 617, C. Civ. Proc. 1895; re-en. Sec. 6508, Rev. C. 1907; re-en. Sec. 9100, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 399; re-en. Sec. 9100, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1971; R.C.M. 1947, 93-2908(part).

Cross-References

Fees of Clerk of District Court, 25-1-201.

Change of venue, Title 25, ch. 2, part 2.

Hearing outside district on agreement of parties, Rule 77(b), M.R.Civ.P. (see Title 25, ch. 20).

25-10-205. Costs of securing witnesses — substitution of judge. Whenever a motion for substitution of a judge is filed after the action or proceeding is set for trial or hearing, the party filing the motion shall pay to the opposite party all costs necessarily incurred in securing the attendance of witnesses between the date the order was made fixing the day of hearing or trial and the time the motion was filed, and such costs so paid are not recoverable in the action or proceeding.

History: En. Sec. 1, Ch. 5, Ex. L. 1903; re-en. Sec. 6511, Rev. C. 1907; re-en. Sec. 9103, R.C.M. 1921; re-en. Sec. 9103, R.C.M. 1935; R.C.M. 1947, 93-2911; amd. Sec. 100, Ch. 575, L. 1981.

Cross-References

Witness fees, Title 26, ch. 2, part 5.

25-10-206. Secretary of state's fee for accepting service of process. The fee of $5 paid by the plaintiff to the secretary of state pursuant to part 6 of chapter 3 and Rule 4D(6), M.R.Civ.P., shall be taxed as part of his costs if he prevails in the action.

History: En. Sec. 5, Ch. 10, L. 1937; amd. Sec. 11, Ch. 117, L. 1961; R.C.M. 1947, 53-205.

Part 3

Attorneys' Fees

Part Cross-References

Attorneys' fees recoverable in action challenging validity and constitutionality of local government petition for initiative or referendum, 7-5-135.

Costs generally allowable, 25-10-201.

Claiming costs, Title 25, ch. 10, part 5.

Attorneys' fees in workers' compensation cases, 39-71-611 through 39-71-614.

25-10-301. Determining compensation of attorneys. The measure and mode of compensation of attorneys and counselors at law is left to agreement, express or implied, of the parties, except that in probate proceedings the court may fix and allow the compensation of attorneys representing administrators, executors, guardians, trustees, and agents appointed by the court. But parties to actions or proceedings are entitled to costs and disbursements as provided by law.

History: En. Sec. 469, p. 228, L. 1867; re-en. Sec. 545, p. 147, Cod. Stat. 1871; re-en. Sec. 481, p. 168, L. 1877; re-en. Sec. 481, 1st Div. Rev. Stat. 1879; re-en. Sec. 494, 1st Div. Comp. Stat. 1887; amd. Sec. 1850, C. Civ. Proc. 1895; re-en. Sec. 7153, Rev. C. 1907; amd. Sec. 1, Ch. 45, L. 1919; re-en. Sec. 9786, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1021; re-en. Sec. 9786, R.C.M. 1935; R.C.M. 1947, 93-8601.

Cross-References

Costs generally allowable, 25-10-201.

Claiming costs, Title 25, ch. 10, part 5.

Allowance of attorneys' fees to unlicensed persons forbidden, 37-61-215.

Judgment lien for compensation, 37-61-420.

Settlement of fees in estates and probate proceedings, 72-3-634.

25-10-302. Inclusion of attorney's fees in bill of costs. The attorney's fees mentioned in 30-9-511, 71-1-233, 71-3-124, and 25-10-303 need not be included in the cost bill if they are made a part of the judgment.

History: En. Sec. 1865, C. Civ. Proc. 1895; re-en. Sec. 7168, Rev. C. 1907; re-en. Sec. 9801, R.C.M. 1921; re-en. Sec. 9801, R.C.M. 1935; R.C.M. 1947, 93-8617; amd. Sec. 2, Ch. 528, L. 1981.

Cross-References

Judgment, Title 25, ch. 9.

Costs, Rule 54(d), M.R.Civ.P. (see Title 25, ch. 20).

Attorney's or litigant's liability for excess costs when he unreasonably multiplies proceedings, 37-61-421.

25-10-303. Attorney's fees — motor vehicle claim. In an action involving solely the recovery of property damages arising out of the ownership, maintenance, or use of a motor vehicle, in which the plaintiff secures a judgment equal to or greater than the amount of damages claimed by the plaintiff in his last written offer to the defendant or his agent prior to the filing of the cause of action, the court shall allow plaintiff's reasonable attorney's fee, which shall be fixed by the court, not withstanding any agreement between the parties to the contrary. If the defendant or his agent fails to make any offer within 15 days of the date requested to do so by the plaintiff, the plaintiff may file the cause of action and, if successful in the action, shall be entitled to his reasonable attorney's fee under this provision.

History: En. Sec. 3, Ch. 528, L. 1981.

Part 4

Officers' Fees, Prepayment

25-10-401. Itemization of officer's fees. No fees of any officer shall be payable until an itemized account of the same, signed by the officer, shall be presented to the person liable therefor.

History: En. Sec. 11, p. 52, L. 1874; re-en. Sec. 815, 1st Div. Rev. Stat. 1879; re-en. Sec. 521, 1st Div. Comp. Stat. 1887; en. Sec. 1877, C. Civ. Proc. 1895; re-en. Sec. 7180, Rev. C. 1907; re-en. Sec. 9813, R.C.M. 1921; re-en. Sec. 9813, R.C.M. 1935; R.C.M. 1947, 93-8629.

Cross-References

Court reporters, Title 3, ch. 5, part 6.

Sheriffs' department, Title 7, ch. 32, part 21.

Fees of Clerk of District Court, 25-1-201.

25-10-402. No charge for copies furnished by party. In all cases where copies of pleadings, affidavits, or other papers are to be served, neither the sheriff nor clerk shall charge or receive a fee for making such copies when the same are furnished to such officer by the party to the action or his attorney.

History: En. Sec. 1905, C. Civ. Proc. 1895; re-en. Sec. 7199, Rev. C. 1907; re-en. Sec. 9832, R.C.M. 1921; re-en. Sec. 9832, R.C.M. 1935; R.C.M. 1947, 93-8717.

Cross-References

Service by an officer, Title 25, ch. 3, part 2.

Service of telephonic or telegraphic copy, 25-3-501.

Lost papers, 25-4-111.

25-10-403. Prepayment of fees. Each party to a civil action is required to pay the fees fixed by law for the performance of any service or duty by any officer of such court at the instance of such party at the time such service is rendered, except in the case mentioned in 25-10-405 and 25-10-701; and no such officer is required to perform such service or duty unless the fees fixed therefor are, on demand, first paid or tendered.

History: En. Sec. 565, p. 150, Cod. Stat. 1871; re-en. Sec. 505, p. 173, L. 1877; re-en. Sec. 505, 1st Div. Rev. Stat. 1879; re-en. Sec. 518, 1st Div. Comp. Stat. 1887; re-en. Sec. 1875, C. Civ. Proc. 1895; re-en. Sec. 7178, Rev. C. 1907; re-en. Sec. 9811, R.C.M. 1921; re-en. Sec. 9811, R.C.M. 1935; R.C.M. 1947, 93-8627.

Cross-References

Court reporters, Title 3, ch. 5, part 6.

Collection and disposal of fees, 7-4-2511.

Sheriffs' department, Title 7, ch. 32, part 21.

Fees of Clerk of District Court, 25-1-201.

25-10-404. Poor persons not required to prepay fees. Any person, who will file an affidavit stating that he has a good cause of action or defense and that he is unable to pay the costs or procure security to secure the same, may commence and prosecute or defend an action in any of the courts and administrative tribunals of this state; then it is hereby made the duty of the officers of the courts and administrative tribunals to issue all writs and serve the same and perform all services in the action without demanding or receiving their fees in advance.

History: En. Sec. 2, p. 71, L. 1869; re-en. Sec. 563, p. 150, Cod. Stat. 1871; amd. Sec. 1, p. 40, Ex. L. 1873; amd. Sec. 503, p. 173, L. 1877; re-en. Sec. 503, 1st Div. Rev. Stat. 1879; re-en. Sec. 516, 1st Div. Comp. Stat. 1887; re-en. Sec.1873, C. Civ., Proc. 1895; re-en. Sec. 7176, Rev. C. 1907; re-en. Sec. 9809, R.C.M. 1921; re-en. Sec. 9809, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1971; amd. Sec. 1, Ch. 90, L. 1973; R.C.M. 1947, 93-8625.

Cross-References

Appeals in forma pauperis, Rule 18, M.R.App.P. (see Title 25, ch. 21).

25-10-405. Governmental entities not required to prepay fees. The state, a county, a municipality, or any subdivision thereof or any officer when prosecuting or defending an action on behalf of the state, a county, a municipality, or a subdivision thereof is not required to pay or deposit any fee or amount to or with any officer during the prosecution or defense of an action, except the fee under 25-1-201(1)(p) for filing a motion for substitution of a judge.

History: En. Sec. 564, p. 150, Cod. Stat. 1871; re-en. Sec. 504, p. 173, L. 1877; re-en. Sec. 504, 1st Div. Rev. Stat 1879; re-en. Sec. 517, 1st Div. Comp. Stat. 1887; en. Sec. 1874, C. Civ. Proc. 1895; re-en. Sec. 7177, Rev. C. 1907; re-en. Sec. 9810, R.C.M. 1921; amd. Sec. 1, Ch. 9, L. 1925; re-en. Sec. 9810, R.C.M. 1935; R.C.M. 1947, 93-8626(part); amd. Sec. 3, Ch. 318, L. 1987.

Compiler's Comments

1987 Amendment: At end of section inserted exception clause referring to fee for filing motion for substitution of judge.

Cross-References

Advanced payment for witnesses of state or county not required, 26-2-508.

25-10-406. Collection of clerk's and sheriff's costs after judgment. In all cases, after final judgment, the clerk or sheriff may make out a bill of costs against the party incurring them, and if not paid within 20 days after demand, execution may issue in the name of the parties to the action for the benefit of the clerk or sheriff.

History: En. Sec. 10, p. 51, L. 1874; re-en. Sec. 814, 1st Div. Rev. Stat. 1879; re-en. Sec. 520, 1st Div. Comp. Stat. 1887; en. Sec. 1876, C. Civ. Proc. 1895; re-en. Sec. 7179, Rev. C. 1907; re-en. Sec. 9812, R.C.M. 1921; re-en. Sec. 9812, R.C.M. 1935; R.C.M. 1947, 93-8628.

Cross-References
Sheriffs' department, Title 7, ch. 32, part 21.
Fees of Clerk of District Court, 25-1-201.
Prepayment of costs of service, 25-3-203.

Part 5

Claiming Costs

Part Cross-References
Entry of judgment not to be delayed for taxing of costs, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

25-10-501. Bill of costs. The party in whose favor judgment is rendered and who claims his costs must deliver to the clerk and serve upon the adverse party, within 5 days after the verdict or notice of the decision of the court or referee or, if the entry of the judgment on the verdict or decision be stayed, then before such entry is made, a memorandum of the items of his costs and necessary disbursements in the action or proceeding, which memorandum must be verified by the oath of the party, his attorney or agent, or the clerk of his attorney, stating that to the best of his knowledge and belief the items are correct and that the disbursements have been necessarily incurred in the action or proceeding.

History: En. Sec. 412, p. 128, Bannack Stat.; amd. Sec. 481, p. 230, L. 1867; re-en. Sec. 557, p. 149, Cod. Stat. 1871; amd. Sec. 1, p. 39, Ex. L. 1873; amd. Sec. 9, p. 51, L. 1874; amd. Secs. 494-497, p. 171, L. 1877; re-en. Secs. 494-497, 1st Div. Rev. Stat. 1879; re-en. Secs. 507-510, 1st Div. Comp. Stat. 1887; re-en. Sec. 1867, C. Civ. Proc. 1895; re-en. Sec. 7170, Rev. C. 1907; re-en. Sec. 9803, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1033; re-en. Sec. 9803, R.C.M. 1935; R.C.M. 1947, 93-8619(part).

25-10-502. Procedure upon objection to bill of costs. A party dissatisfied with the costs claimed may, within 5 days after notice of filing of the bill of costs, file and serve a notice of a motion to have the same taxed by the court in which the judgment was rendered or by the judge thereof at chambers.

History: En. Sec. 412, p. 128, Bannack Stat.; amd. Sec. 481, p. 230, L. 1867; re-en. Sec. 557, p. 149, Cod. Stat. 1871; amd. Sec. 1, p. 39, Ex. L. 1873; amd. Sec. 9, p. 51, L. 1874; amd. Secs. 494-497, p. 171, L. 1877; re-en. Secs. 494-497, 1st Div. Rev. Stat. 1879; re-en. Secs. 507-510, 1st Div. Comp. Stat. 1887; re-en. Sec. 1867, C. Civ. Proc. 1895; re-en. Sec. 7170, Rev. C. 1907; re-en. Sec. 9803, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1033; re-en. Sec. 9803, R.C.M. 1935; R.C.M. 1947, 93-8619(part).

Cross-References
Powers of judges at chambers, 3-5-311.
Pleadings, motions, and other papers, Title 25, ch. 4.

25-10-503. How costs on appeal claimed. Whenever costs are awarded to a party by an appellate court, if he claims such costs, he must, within 30 days after the remittitur is filed with the clerk below, deliver to such clerk a memorandum of his costs, verified as prescribed in 25-10-501, and thereafter he may have an execution therefor as upon a judgment.

History: En. Sec. 499, p. 172, L. 1877; re-en. Sec. 499, 1st Div. Rev. Stat. 1879; re-en. Sec. 512, 1st Div. Comp. Stat. 1887; re-en. Sec. 1869, C. Civ. Proc. 1895; re-en. Sec. 7172, Rev. C. 1907; re-en. Sec. 9805, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1034; re-en. Sec. 9805, R.C.M. 1935; R.C.M. 1947, 93-8621.

Cross-References
When costs of appeal discretionary, 25-10-104.
Appeal to Supreme Court, Title 25, ch. 12.
Remittitur must be certified to Clerk of District Court, Rule 16, M.R.App.P. (see Title 25, ch. 21).

Costs, Rule 33, M.R.App.P. (see Title 25, ch. 21).

Notice of remittitur, Rule 35, M.R.App.P. (see Title 25, ch. 21).

25-10-504. Clerk to include costs in judgment. The clerk must include in the judgment entered up by him the costs, if the same have been taxed or ascertained; and he must, within 2 days after the same are taxed or ascertained, if not included in the judgment, insert the same in a blank left in the judgment for that purpose and must make a similar insertion of the costs in the copies and docket of the judgment.

History: En. Sec. 482, p. 230, L. 1867; re-en. Sec. 558, p. 149, Cod. Stat. 1871; re-en. Sec. 500, p. 172, L. 1877; re-en. Sec. 500, 1st Div. Rev. Stat. 1879; re-en. Sec. 513, 1st Div. Comp. Stat. 1887; re-en. Sec. 1870, C. Civ. Proc. 1895; re-en. Sec. 7173, Rev. C. 1907; re-en. Sec. 9806, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1035; re-en. Sec. 9806, R.C.M. 1935; R.C.M. 1947, 93-8622(part).

Cross-References

Entry of judgment not to be delayed for taxing of costs, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

Part 6

Security for Costs

25-10-601. Security for costs from nonresident plaintiff. When the plaintiff in an action resides out of this state or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant. When required, all proceedings in the action must be stayed until an undertaking, executed by two or more persons, is filed with the clerk to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment or in the progress of the action, not exceeding $300. A new or an additional undertaking may be ordered by the court or judge upon proof that the original undertaking is insufficient security and proceedings in the action stayed until such new or additional undertaking is executed and filed.

History: En. Sec. 414, p. 128, Bannack Stat.; amd. Sec. 483, p. 230, L. 1867; re-en. Sec. 559, p. 149, Cod. Stat. 1871; re-en. Sec. 501, p. 172, L. 1877; re-en. Sec. 501, 1st Div. Rev. Stat. 1879; re-en. Sec. 514, 1st Div. Comp. Stat. 1887; re-en. Sec. 1871, C. Civ. Proc. 1895; re-en. Sec. 7174, Rev. C. 1907; re-en. Sec. 9807, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1036; re-en. Sec. 9807, R.C.M. 1935; R.C.M. 1947, 93-8623.

Cross-References

Extension of time for giving security, 25-1-301.

Deposit of money in lieu of undertaking, 25-1-401.

25-10-602. Dismissal when security not given. After the lapse of 30 days from the service of notice that security is required or of an order for new or additional security, upon proof thereof and that no undertaking as required has been filed, the court or judge may order the action to be dismissed.

History: En. Sec. 485, p. 230, L. 1867; re-en. Sec. 561, p. 149, Cod. Stat. 1871; re-en. Sec. 502, p. 173, L. 1877; re-en. Sec. 502, 1st Div. Rev. Stat. 1879; re-en. Sec. 515, 1st Div. Comp. Stat. 1887; re-en. Sec. 1872, C. Civ. Proc. 1895; re-en. Sec. 7175, Rev. C. 1907; re-en. Sec. 9808, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1037; re-en. Sec. 9808, R.C.M. 1935; R.C.M. 1947, 93-8624.

Cross-References

Judgment on merits, 25-9-101.

Involuntary dismissal, Rule 41(b), M.R.Civ.P. (see Title 25, ch. 20).

Costs of previously-dismissed action, Rule 41(d), M.R.Civ.P. (see Title 25, ch. 20).

Part 7

Payment of Costs by Governmental Entities

Part Cross-References

State liability exposure and insurance coverage, Title 2, ch. 9.

Governmental entities not required to give security, 25-1-402.

Costs, Rule 54(d), M.R.Civ.P. (see Title 25, ch. 20).

25-10-701. Public officers not to be personally taxed. No officer prosecuting or defending as provided in 25-10-405 shall be taxed with costs or damages, but such costs or damages, if any, shall be taxed to the state, county, or municipality, as the case may be.

History: En. Sec. 564, p. 150, Cod. Stat. 1871; re-en. Sec. 504, p. 173, L. 1877; re-en. Sec. 504, 1st Div. Rev. Stat 1879; re-en. Sec. 517, 1st Div. Comp. Stat. 1887; en. Sec. 1874, C. Civ. Proc. 1895; re-en. Sec. 7177, Rev. C. 1907; re-en. Sec. 9810, R.C.M. 1921; amd. Sec. 1, Ch. 9, L. 1925; re-en. Sec. 9810, R.C.M. 1935; R.C.M. 1947, 93-8626(part).

Cross-References

Immunization and indemnification of public employees, 2-9-305.

25-10-702. Payment of costs by state. When the state is a party and costs are awarded against it, they must be paid out of the state treasury.

History: En. Sec. 1878, C. Civ. Proc. 1895; re-en. Sec. 7181, Rev. C. 1907; re-en. Sec. 9814, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1038; re-en. Sec. 9814, R.C.M. 1935; R.C.M. 1947, 93-8630.

Cross-References

Payment of judgments against the state, 2-9-315.

25-10-703. Payment of costs by county. When a county is a party and costs are awarded against it, they must be paid out of the county treasury.

History: En. Sec. 1879, C. Civ. Proc. 1895; re-en. Sec. 7182, Rev. C. 1907; re-en. Sec. 9815, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1039; re-en. Sec. 9815, R.C.M. 1935; R.C.M. 1947, 93-8631.

Cross-References

Payment of judgments against governmental entities, 2-9-316.

Judgments against county or county officers, 25-13-205.

25-10-704 through 25-10-710 reserved.

25-10-711. Award of costs against governmental entity when suit or defense is frivolous or pursued in bad faith. (1) In any civil action brought by or against the state, a political subdivision, or an agency of the state or a political subdivision, the opposing party, whether plaintiff or defendant, is entitled to the costs enumerated in 25-10-201 and reasonable attorney's fees as determined by the court if:

(a) he prevails against the state, political subdivision, or agency; and

(b) the court finds that the claim or defense of the state, political subdivision, or agency that brought or defended the action was frivolous or pursued in bad faith.

(2) Costs may be granted pursuant to subsection 1 notwithstanding any other provision of the law to the contrary.

History: En. Sec. 1, Ch. 402, L. 1979.

Cross-References

Government entities not required to give security, 25-1-402.

Judgments against county or county officer, 25-13-205.

Garnishment of public officers, 25-13-504.

Governmental property exempt from execution, 25-13-613.

CHAPTER 11

NEW TRIAL

Part 1 — General Provisions

25-11-101. New trial defined.
25-11-102. Grounds for new trial.
25-11-103. Grounds after trial by the court.
25-11-104. How motion for new trial made.

Chapter Cross-References

Procedure when a juror becomes sick, 25-7-304.

Procedure when jury prevented from giving verdict, 25-7-305.

Costs of appeal from order of new trial discretionary with court, 25-10-104.

New trial — amendment of judgment, Rule 59, M.R.Civ.P. (see Title 25, ch. 20).

Grounds for appeal, Rule 1, M.R.App.P. (see Title 25, ch. 21).

Motion for a new trial — criminal procedure, Title 46, ch. 16, part 7.

Part 1

General Provisions

25-11-101. New trial defined. A new trial is a reexamination of an issue of fact in the same court after a trial and decision by a jury or court or by referees.

History: En. Sec. 168, p. 76, Bannack Stat.; en. Sec. 192, p. 171, L. 1867; re-en. Sec. 232, p. 74, Cod. Stat. 1871; re-en. Sec. 284, p. 111, L. 1877; re-en. Sec. 284, 1st Div. Rev. Stat. 1879; re-en. Sec. 295, 1st Div. Comp. Stat. 1887; re-en. Sec. 1170, C. Civ. Proc. 1895; re-en. Sec. 6793, Rev. C. 1907; re-en. Sec. 9395, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 656; re-en. Sec. 9395, R.C.M. 1935; R.C.M. 1947, 93-5601.

25-11-102. Grounds for new trial. The former verdict or other decision may be vacated and a new trial granted on the application of the party aggrieved for any of the following causes materially affecting the substantial rights of such party:

(1) irregularity in the proceedings of the court, jury, or adverse party or any order of the court or abuse of discretion by which either party was prevented from having a fair trial;

(2) misconduct of the jury. Whenever any one or more of the jurors have been induced to assent to any general or special verdict or to a finding on any question submitted to them by the court by a resort to the determination of chance, such misconduct may be proved by the affidavit of any one of the jurors.

(3) accident or surprise which ordinary prudence could not have guarded against;

(4) newly discovered evidence material for the party making the application which he could not, with reasonable diligence, have discovered and produced at the trial;

(5) excessive damages appearing to have been given under the influence of passion or prejudice;

(6) insufficiency of the evidence to justify the verdict or other decision or that it is against law;

(7) error in law occurring at the trial and excepted to by the party making the application.

History: **En. Sec. 169, p. 76, Bannack Stat.; amd. Sec. 193, p. 171, L. 1867; re-en. Sec. 233, p. 74, Cod. Stat. 1871; amd. Sec. 285, p. 111, L. 1877; re-en. Sec. 285, 1st Div. Rev. Stat. 1879; amd. Sec. 7, p. 10, L. 1881; re-en. Sec. 296, 1st Div. Comp. Stat. 1887; re-en. Sec. 1171, C. Civ. Proc. 1895; re-en. Sec. 6794, Rev. C. 1907; re-en. Sec. 9397, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 657; amd. Sec. 1, Ch. 68, L. 1935; re-en. Sec. 9397, R.C.M. 1935; R.C.M. 1947, 93-5603; amd. Sec. 101, Ch. 575, L. 1981.**

Cross-References

Power of Supreme Court to order new trial, 3-2-204.

Grounds for motion to be stated with particularity, Rule 59(a), M.R.Civ.P. (see Title 25, ch. 20).

Order granting new trial to state grounds for order, Rule 59(f), M.R.Civ.P. (see Title 25, ch. 20).

Relief from judgment for reasons undiscovered in time for motion, Rule 60(b), M.R.Civ.P. (see Title 25, ch. 20).

Harmless error not grounds for new trial, Rule 61, M.R.Civ.P. (see Title 25, ch. 20).

25-11-103. Grounds after trial by the court. No new trial may be granted in cases tried by the court without a jury, except on the grounds mentioned in subsections (1), (3), and (4) of 25-11-102.

History: **En. Sec. 5, Ch. 225, L. 1921; re-en. Sec. 9396, R.C.M. 1921; re-en. Sec. 9396, R.C.M. 1935; R.C.M. 1947, 93-5602; amd. Sec. 102, Ch. 575, L. 1981.**

Cross-References

Issues of law to be decided by the court, 25-7-102.

Province of court and jury, Title 26, ch. 1, part 2.

Court to decide questions of law, Rule 202(g), Montana Rules of Evidence (see Title 26, ch. 10).

25-11-104. How motion for new trial made. (1) Motions for new trials shall be made as follows:

(a) For causes mentioned in 25-11-102(1), the motion shall be made on affidavits or on the minutes of the court.

(b) For causes mentioned in subsection (2), (3), or (4) of 25-11-102, the motion shall be made only on affidavits.

(c) For causes mentioned in subsection (5), (6), or (7) of 25-11-102, the motion shall be made only on the minutes of the court.

(2) The official stenographic reports of the trial may be referred to as a part of the minutes of the court.

History: **En. Sec. 170, p. 77, Bannack Stat.; re-en. Sec. 234, p. 75, Cod. Stat. 1871; amd. Sec. 286, p. 112, L. 1877; re-en. Sec. 286, 1st Div. Rev. Stat. 1879; re-en. Sec. 297, 1st Div. Comp. Stat. 1887; re-en. Sec. 1172, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 41, L. 1907; Sec. 6795, Rev. C. 1907; amd. Sec. 6, Ch. 225, L. 1921; re-en. Sec. 9398, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 658; amd. Sec. 2, Ch. 68, L. 1935; re-en. Sec. 9398, R.C.M. 1935; R.C.M. 1947, 93-5604; amd. Sec. 103, Ch. 575, L. 1981.**

Cross-References

Enlargement of time for motion, Rule 6(b), M.R.Civ.P. (see Title 25, ch. 20).

Joined with motion for judgment notwithstanding the verdict, Rule 50(b), M.R.Civ.P. (see Title 25, ch. 20).

Joined with motion to amend findings, Rule 52(b), M.R.Civ.P. (see Title 25, ch. 20).

Time for serving affidavits, Rule 59(c), M.R.Civ.P. (see Title 25, ch. 20).

Stay of execution pending motion, Rule 62(b), M.R.Civ.P. (see Title 25, ch. 20).

Motion as suspending time for appeal, Rule 5, M.R.App.P. (see Title 25, ch. 21).

CHAPTER 12

APPEAL TO SUPREME COURT

Part 1 — General Provisions

25-12-101. Exclusive method of review.
25-12-102. Cases in which appeal may be taken.

Chapter Cross-References

When costs of appeal discretionary, 25-10-104.

How costs on appeal claimed, 25-10-503.

Part 1

General Provisions

25-12-101. Exclusive method of review. A judgment or order in a civil action, except when expressly made final by this code, may be reviewed as prescribed by the Rules of Appellate Procedure and not otherwise.

History: En. Sec. 248, p. 94, Bannack Stat.; re-en. Sec. 317, p. 199, L. 1867; re-en. Sec. 366, p. 107, Cod. Stat. 1871; re-en. Sec. 405, p. 149, L. 1877; re-en. Sec. 405, 1st Div. Rev. Stat. 1879; re-en. Sec. 418, 1st Div. Comp. Stat. 1887; re-en. Sec. 1720, C. Civ. Proc. 1895; re-en. Sec. 7096, Rev. C. 1907; re-en. Sec. 9729, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 936; re-en. Sec. 9729, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; R.C.M. 1947, 93-8001(part).

Cross-References

Appeals from District Court to Supreme Court, Rule 72, M.R.Civ.P. (see Title 25, ch. 20).

Statutes superseded by appellate rules, Rule 53, M.R.App.P. (see Title 25, ch. 21).

25-12-102. Cases in which appeal may be taken. A party aggrieved may appeal in the cases prescribed in the Rules of Appellate Procedure.

History: En. Sec. 248, p. 94, Bannack Stat.; amd. Sec. 319, p. 199, L. 1867; re-en. Sec. 368, p. 107, Cod. Stat. 1871; re-en. Sec. 407, p. 150, L. 1877; re-en. Sec. 407, 1st Div. Rev. Stat. 1879; re-en. Sec. 420, 1st Div. Comp. Stat. 1887; re-en. Sec. 1721, C. Civ. Proc. 1895; re-en. Sec. 7097, Rev. C. 1907; re-en. Sec. 9730, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 938; re-en. Sec. 9730, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; R.C.M. 1947, 93-8002(part).

Cross-References

Judgments or orders from which appeal may be taken, Rule 1, M.R.App.P. (see Title 25, ch. 21).

What court may review on appeal, Rule 2, M.R.App.P. (see Title 25, ch. 21).

CHAPTER 13

EXECUTION OF JUDGMENT

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Chapter Cross-References

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Execution for costs awarded on appeal, 25-10-503.

Proceedings in aid of execution, Title 25, ch. 14.

Writ of Execution for compensation of master, Rule 53(a), M.R.Civ.P. (see Title 25, ch. 20).

Execution of judgment to comply with statutes, Rule 69, M.R.Civ.P. (see Title 25, ch. 20).

Stay of execution pending appeal, Rule 7, M.R.App.P. (see Title 25, ch. 21).

Statute of Limitations on action against Sheriff for nonpayment of money collected by execution, 27-2-209.

Execution for balance due following prejudgment attachment, 27-18-905.

Execution for damages and costs upon Writ of Mandate, 27-26-402.

Transfers exempt from Uniform Commercial Code — bulk transfers, 30-6-103.

Default, Title 30, ch. 9, part 5.

Exempt property not assigned by general assignment, 31-2-227.

Right of creditors whose claims have matured to have execution, 31-2-321.

Priority in cases of execution or attachment, 71-3-303.

Part 1

Right to Enforcement of Judgment

Part Cross-References

Entry of judgment and satisfaction — lien, Title 25, ch. 9, part 3.

Judgments — costs, Rule 54, M.R.Civ.P. (see Title 25, ch. 20).

Entry of judgment, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

25-13-101. Time limit for issuing execution. The party in whose favor judgment is given may, at any time within 6 years after the entry thereof, have a writ of execution issued for its enforcement.

History: En. Sec. 183, p. 79, Bannack Stat.; re-en. Sec. 209, p. 176, L. 1867; re-en. Sec. 250, p. 80, Cod. Stat. 1871; amd. Sec. 301, p. 118, L. 1877; re-en. Sec. 301, 1st Div. Rev. Stat. 1879; re-en. Sec. 312, 1st Div. Comp. Stat. 1887; amd. Sec. 1210, C. Civ. Proc. 1895; re-en. Sec. 6813, Rev. C. 1907; re-en. Sec. 9416, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 681; re-en. Sec. 9416, R.C.M. 1935; R.C.M. 1947, 93-5801.

25-13-102. Execution after six years. In all cases, the judgment may be enforced or carried into execution after the lapse of 6 years from the date of its entry by leave of the court, upon motion, or by judgment for that purpose founded upon supplemental pleadings.

History: En. Sec. 7, p. 51, L. 1874; re-en. Sec. 813, 1st Div. Rev. Stat. 1879; re-en. Sec. 349, 1st Div. Comp. Stat. 1887; en. Sec. 1215, C. Civ. Proc. 1895; re-en. Sec. 6818, Rev. C. 1907; re-en. Sec. 9421, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 685; re-en. Sec. 9421, R.C.M. 1935; R.C.M. 1947, 93-5807.

25-13-103. Execution after death of a party. Notwithstanding the death of a party after the judgment, execution thereon may be issued or it may be enforced as follows:

(1) In case of the death of the judgment creditor, it may be enforced upon the application of his executor or administrator or successor in interest.

(2) In case of the death of the judgment debtor, if the judgment be for the recovery of real or personal property or the enforcement of a lien thereon, execution may be issued with the same effect as if he were still living.

History: En. Sec. 215, p. 178, L. 1867; re-en. Sec. 256, p. 82, Cod. Stat. 1871; re-en. Sec. 306, p. 120, L. 1877; re-en. Sec. 306, 1st Div. Rev. Stat. 1879; re-en. Sec. 317, 1st Div. Comp. Stat. 1887; re-en. Sec. 1216, C. Civ. Proc. 1895; re-en. Sec. 6819, Rev. C. 1907; re-en. Sec. 9422, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 686; re-en. Sec. 9422, R.C.M. 1935; R.C.M. 1947, 93-5808.

Cross-References

Real party in interest, Rule 17, M.R.Civ.P. (see Title 25, ch. 20).

Substitution by death, Rule 25(a), M.R.Civ.P. (see Title 25, ch. 20).

Right to bring action or assert defense, Title 27, ch. 1, part 5.

25-13-104. Compelling contribution or repayment — joint debtor, surety. (1) When property liable to an execution against several persons is sold thereon and more than a due proportion of the judgment is satisfied out of the proceeds of the sale of property of one of them or one of them pays, without a sale, more than his proportion, he may compel contribution from the others; and when a judgment is against several and is upon an obligation of one of them as surety for another and the surety pays the amount or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal.

(2) In such case, the person so paying or contributing is entitled to the benefit of the judgment to enforce contribution or repayment if, within 10 days after his payment, he file with the clerk of the court where judgment was rendered notice of his payment and claim to contribution or repayment. Upon the filing of such notice, the clerk must make an entry thereof in the margin of the docket.

History: En. Sec. 337, p. 132, L. 1877; re-en. Sec. 337, 1st Div. Rev. Stat. 1879; re-en. Sec. 348, 1st Div. Comp. Stat. 1887; re-en. Sec. 1242, C. Civ. Proc. 1895; re-en. Sec. 6845, Rev. C. 1907; re-en. Sec. 9451, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 709; re-en. Sec. 9451, R.C.M. 1935; R.C.M. 1947, 93-5843; amd. Sec. 104, Ch. 575, L. 1981.

Cross-References

Joint debtor's right of contribution — discharge, 25-15-202.

Multiple defendants' liability — right of contribution, 27-1-703.

Right to contribution from joint debtors, 28-1-303.

Surety's right to reimbursement and contribution, 28-11-417.

25-13-105. Compelling repayment — surety on appeal. Whenever any surety on an undertaking on appeal, executed to stay proceedings upon a money judgment, pays the judgment, either with or without action, after its affirmation by the appellate court, he is substituted to the rights of the judgment creditor and is entitled to control, enforce, and satisfy such judgment in all respects as if he had recovered the same.

History: En. Sec. 1903, C. Civ. Proc. 1895; re-en. Sec. 7197, Rev. C. 1907; re-en. Sec. 9830, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1059; re-en. Sec. 9830, R.C.M. 1935; R.C.M. 1947, 93-8715.

Cross-References

Undertaking for security, Title 25, ch. 1, part 4.

Stay of judgment or order pending appeal, Rule 7, M.R.App.P. (see Title 25, ch. 21).

Sureties and their justification, Rule 8, M.R.App.P. (see Title 25, ch. 21).

Suretyship, Title 28, ch. 11, part 4.

Part 2

Method of Enforcement

Part Cross-References

Enforcement of court's order, 25-8-102.

Judgment for specific acts, Rule 70, M.R.Civ.P. (see Title 25, ch. 20).

25-13-201. Judgments for money or the possession of property. When the judgment is for money or the possession of real or personal property, the same may be enforced by a writ of execution; and if the judgment direct that the defendant be arrested, the execution may issue against the person of the judgment debtor after the return of an execution against his property unsatisfied in whole or in part.

History: En. Sec. 213, p. 177, L. 1867; re-en. Sec. 254, p. 81, Cod. Stat. 1871; en. Sec. 305, p. 120, L. 1877; re-en. Sec. 305, 1st Div. Rev. Stat. 1879; re-en. Sec. 316, 1st Div. Comp. Stat. 1887; re-en. Sec. 1214, C. Civ. Proc. 1895; re-en. Sec. 6817, Rev. C. 1907; re-en. Sec. 9420, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 684; re-en. Sec. 9420, R.C.M. 1935; R.C.M. 1947, 93-5805(part).

Cross-References

Execution against person of judgment debtor, 25-13-308.

Arrest and bail in civil actions, Title 27, ch. 16.

25-13-202. Judgments requiring the sale of property. When the judgment requires the sale of property, the same may be enforced by a writ reciting such judgment or the material parts thereof and directing the proper officer to execute the judgment by making the sale and applying the proceeds in conformity therewith.

History: En. Sec. 213, p. 177, L. 1867; re-en. Sec. 254, p. 81, Cod. Stat. 1871; en. Sec. 305, p. 120, L. 1877; re-en. Sec. 305, 1st Div. Rev. Stat. 1879; re-en. Sec. 316, 1st Div. Comp. Stat. 1887; re-en. Sec. 1214, C. Civ. Proc. 1895; re-en. Sec. 6817, Rev. C. 1907; re-en. Sec. 9420, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 684; re-en. Sec. 9420, R.C.M. 1935; R.C.M. 1947, 93-5805(part).

25-13-203. Judgments requiring the performance of specific acts. (1) When the judgment requires the performance of any other act than those designated in 25-13-201 and 25-13-202, a certified copy of the judgment may be served upon the party against whom the same is rendered or upon the person or officer required thereby or by law to obey the same, and obedience thereto may be enforced by the court.

(2) Where a judgment directs a party to make a deposit or delivery or to convey real property, if the direction is disobeyed, the court, besides punishing the disobedience as a contempt, may by order require the sheriff or levying officer, who may be a registered process server, to take and deposit or deliver the money or other personal property or to convey the real property in conformity with the direction of the court.

History: (1)En. Sec. 213, p. 177, L. 1867; re-en. Sec. 254, p. 81, Cod. Stat. 1871; en. Sec. 305, p. 120, L. 1877; re-en. Sec. 305, 1st Div. Rev. Stat. 1879; re-en. Sec. 316, 1st Div. Comp. Stat. 1887; re-en. Sec. 1214, C. Civ. Proc. 1895; re-en. Sec. 6817, Rev. C. 1907; re-en. Sec. 9420, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 684; re-en. Sec. 9420, R.C.M. 1935; Sec. 93-5805, R.C.M. 1947; (2)En. Sec. 229, P. 95, L. 1877; re-en. Sec. 229, 1st Div. Rev. Stat. 1879; re-en. Sec. 237, 1st Div. Comp. Stat. 1887; amd. Sec. 972, C. Civ. Proc. 1895; re-en. Sec. 6707, Rev. C. 1907; re-en. Sec. 9310, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 574; re-en. Sec. 9310, R.C.M. 1935; Sec. 93-4504, R.C.M. 1947; R.C.M. 1947, 93-4504(part), 93-5805(part); amd. Sec. 17, Ch. 548, L. 1987.

Compiler's Comments

1987 Amendment: In (2), near middle after "the sheriff", inserted "or levying officer, who may be a registered process server".

Cross-References

Contempts, Title 3, ch. 1, part 5.

25-13-204. Enforcement of order to pay money. Whenever an order for the payment of a sum of money is made by a court or judge pursuant to the provisions of this code, it may be enforced by execution in the same manner as if it were a judgment.

History: En. Sec. 473, p. 166, L. 1877; re-en. Sec. 473, 1st Div. Rev. Stat. 1879; re-en. Sec. 486, 1st Div. Comp. Stat. 1887; re-en. Sec. 1825, C. Civ. Proc. 1895; re-en. Sec. 7144, Rev. C. 1907; re-en. Sec. 9777, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1007; re-en. Sec. 9777, R.C.M. 1935; R.C.M. 1947, 93-5806.

Cross-References

Enforcement of judgment or order to pay child support, 40-6-117.

25-13-205. Judgments against county or county officer. When a judgment is rendered against the county or against any county officer in an action prosecuted against him in his name of office, when the same is to be paid by the county, no execution must issue upon the judgment, but the same must be paid as other county charges. When so collected, the same must be paid by the county treasurer to the proper person to whom the same is adjudged, upon the delivery of a proper voucher therefor.

History: En. Sec. 342, 5th Div. Rev. Stat. 1879; re-en. Sec. 751, 5th Div. Comp. Stat. 1887; amd. Sec. 4199, Pol. C. 1895; re-en. Sec. 2879, Rev. C. 1907; re-en. Sec. 4450, R.C.M. 1921; re-en. Sec. 4450, R.C.M. 1935; R.C.M. 1947, 16-811.

Cross-References

Payment of judgments against governmental entities, 2-9-316.

Garnishment of public officers, 25-13-504.

Governmental property exempt from execution, 25-13-613.

Collection of judgment against county or county officer, 25-31-1111.

Part 3

Contents of Writ

25-13-301. Form and contents of writ. (1) The writ of execution must:

(a) be issued in the name of the state of Montana, sealed with the seal of the court, and subscribed by the clerk;

(b) be directed to the sheriff or levying officer;

(c) intelligibly refer to the judgment, stating the court and the county where it was entered and, if it is for money, the amount thereof and the amount actually due thereon; and

(d) require the sheriff or levying officer to act substantially as provided in this part.

(2) In executions, the amount thereof must be computed and stated as near as may be in dollars and cents, rejecting fractions of a cent.

History: (1)En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; Sec. 93-5802, R.C.M. 1947; (2)En. Sec. 3152, Pol. C. 1895; re-en. Sec. 2035, Rev. C. 1907; re-en. Sec. 4285, R.C.M. 1921; Cal. Pol. C. Sec. 3274; re-en. Sec. 4285, R.C.M. 1935; Sec. 93-4710, R.C.M. 1947; R.C.M. 1947, 93-4710(part), 93-5802(part); amd. Sec. 105, Ch. 575, L. 1981; amd. Sec. 18, Ch. 548, L. 1987.

Compiler's Comments

1987 Amendment: In (1)(b) and (1)(d), after "the sheriff", inserted "or levying officer".

Cross-References

Liability of Sheriff for failure to execute writ, 7-32-2131.

Money of account, Title 30, ch. 12, part 6.

25-13-302. Execution against principal debtor before surety. Upon the rendition of any judgment, if it shall be shown that one or more of the defendants against whom the judgment is to be rendered are principal debtors and others of the said defendants are sureties of such principal debtor, the court may order the judgment so to state, and upon the issuance of an execution upon such judgment, it shall direct the sheriff or levying officer to make the amount due thereon out of the goods and chattels, lands and tenements of the principal debtor or debtors or, if sufficient thereof cannot be found within his county to satisfy the same, to levy and make the same out of the property, personal or real, of the judgment debtor who was surety.

History: En. Sec. 118, p. 67, Bannack Stat.; re-en. Sec. 145, p. 161, L. 1867; re-en. Sec. 181, p. 62, Cod. Stat. 1871; re-en. Sec. 231, p. 95, L. 1877; re-en. Sec. 231, 1st. Div. Rev. Stat. 1879; re-en. Sec. 239, 1st Div. Comp. Stat. 1887; re-en. Sec. 1001, C. Civ. Proc. 1895; re-en. Sec. 6711, Rev. C. 1907; re-en. Sec. 9314, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 578; re-en. Sec. 9314, R.C.M. 1935; R.C.M. 1947, 93-4702(part); amd. Sec. 19, Ch. 548, L. 1987.

Compiler's Comments

1987 Amendment: Near middle, after "the sheriff", inserted "or levying officer".

Cross-References

Designation in judgment of principal debtors and sureties, 25-9-202.

Suretyship, Title 28, ch. 11, part 4.

25-13-303. Execution when only some of defendants served. When a writ of execution is issued on a judgment recovered against two or more persons in an action upon a joint contract, in which action all the defendants were not served with summons or did not appear, it must direct the sheriff or levying officer to satisfy the judgment out of the joint property of all the defendants and the individual property only of the defendants who were served or who appeared in the action.

History: En. Sec. 185, p. 80, Bannack Stat.; amd. Sec. 211, p. 177, L. 1867; re-en. Sec. 252, p. 81, Cod. Stat. 1871; re-en. Sec. 303, p. 119, L. 1877; re-en. Sec. 303, 1st Div. Rev. Stat. 1879; re-en. Sec. 314, 1st Div. Comp. Stat. 1887; re-en. Sec. 1212, C. Civ. Proc. 1895; re-en. Sec. 6815,

Rev. C. 1907; re-en. Sec. 9418, R.C.M. 1921; re-en. Sec. 9418, R.C.M. 1935; R.C.M. 1947, 93-5803; amd. Sec. 20, Ch. 548, L. 1987.

Compiler's Comments

1987 Amendment: Near middle, after "the sheriff", inserted "or levying officer".

Cross-References

Summoning joint debtor not originally served, 25-15-101.

Procedure when only part of defendants are served, Rule 4D(10), M.R.Civ.P. (see Title 25, ch. 20).

Multiple defendants jointly and severally liable, 27-1-703.

25-13-304. Execution against property of judgment debtor. If the writ be against the property of the judgment debtor, it shall require the sheriff or levying officer to satisfy the judgment, with interest, out of the personal property of such debtor and, if sufficient personal property cannot be found, out of his real property as provided in 25-13-305.

History: En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(part); amd. Sec. 106, Ch. 575, L. 1981; amd. Sec. 21, Ch. 548, L. 1987.

Compiler's Comments

1987 Amendment: Near beginning, after "the sheriff", inserted "or levying officer".

Cross-References

Clerk to include interest in judgment, 25-9-204.

Amount of interest, 25-9-205.

Procedure when debtor withholding property from execution, arrest, 25-14-102.

25-13-305. Execution of lien on real property. If the judgment be a lien upon real property, the writ shall require the sheriff or levying officer to satisfy the judgment, with interest, out of the real property belonging to the judgment debtor on the day when the judgment was docketed or at any time thereafter or, if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the clerk of the district court of such county, stating such day, or any time thereafter.

History: En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(part); amd. Sec. 22, Ch. 548, L. 1987.

Compiler's Comments

1987 Amendment: Near beginning, after "the sheriff", inserted "or levying officer".

Cross-References

Clerk to include interest in judgment, 25-9-204.

Amount of interest, 25-9-205.

Docketing of judgment — lien, 25-9-301.

Judgment lien, 71-3-1504.

25-13-306. Execution against property in hands of representative. If the writ be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff or levying officer to satisfy the judgment, with interest, out of such property.

History: En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814,

Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(2); amd. Sec. 23, Ch. 548, L. 1987.

Compiler's Comments
1987 Amendment: Near end, after "the sheriff", inserted "or levying officer".

Cross-References
Clerk to include interest in judgment, 25-9-204.
Amount of interest, 25-9-205.
Right to bring action or assert defense, Title 27, ch. 1, part 5.

25-13-307. Execution requiring delivery of possession of property. If the writ be for the delivery of the possession of real or personal property, it must require the sheriff or levying officer to deliver the possession of the same, particularly describing it, to the party entitled thereto and may at any time require the sheriff or levying officer to satisfy any costs, damages, rents, or profits recovered by the same judgment out of the personal property of the person against whom it was rendered, the value of the property for which the judgment was rendered to be specified therein, if a delivery cannot be had, and if sufficient personal property cannot be found, then out of the real property, as provided in 25-13-305.

History: En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(4); amd. Sec. 24, Ch. 548, L. 1987.

Compiler's Comments
1987 Amendment: In two places, after "the sheriff", inserted "or levying officer".

Cross-References
Judgments for money or the possession of property, 25-13-201.

25-13-308. Execution against person of judgment debtor. If the writ be against the person of the judgment debtor, it must require the sheriff to arrest such debtor and commit him to the jail of the county until he pay the judgment, with interest, or be discharged, according to law.

History: En. Sec. 184, p. 79, Bannack Stat.; re-en. Sec. 210, p. 176, L. 1867; re-en. Sec. 251, p. 80, Cod. Stat. 1871; re-en. Sec. 302, p. 118, L. 1877; re-en. Sec. 302, 1st Div. Rev. Stat. 1879; re-en. Sec. 313, 1st Div. Comp. Stat. 1887; amd. Sec. 1211, C. Civ. Proc. 1895; re-en. Sec. 6814, Rev. C. 1907; re-en. Sec. 9417, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 682; re-en. Sec. 9417, R.C.M. 1935; R.C.M. 1947, 93-5802(3).

Cross-References
Clerk to include interest in judgment, 25-9-204.
Amount of interest, 25-9-205.
Judgments for money or the possession of property, 25-13-201.
Procedure when debtor withholding property from execution, arrest, 25-14-102.
Effect of discharge, 25-14-309.
Discharge at instance of plaintiff, 25-14-311.
Discharge upon failure of plaintiff to advance money for support of prisoner, 25-14-312.
Arrest and bail in civil actions, Title 27, ch. 16.

Part 4

Execution and Return of Writ

Part Cross-References
Proceedings in aid of execution, Title 25, ch. 14.
Execution, Rule 69, M.R.Civ.P. (see Title 25, ch. 20).

25-13-401. To whom execution issued. Where the execution is against the property of the judgment debtor, it may be issued to the sheriff or levying officer of any county in the state. Where it requires the delivery of real or personal property, it must be issued to the sheriff or levying officer of the county where the property or some part thereof is situated. Executions may be issued at the same time to different counties.

History: **En. Sec. 216, p. 178, L. 1867; re-en. Sec. 257, p. 82, Cod. Stat. 1871; re-en. Sec. 307, p. 120, L. 1877; re-en. Sec. 307, 1st Div. Rev. Stat. 1879; re-en. Sec. 318, 1st Div. Comp. Stat. 1887; re-en. Sec. 1217, C. Civ. Proc. 1895; re-en. Sec. 6820, Rev. C. 1907; re-en. Sec. 9423, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 687; re-en. Sec. 9423, R.C.M. 1935; R.C.M. 1947, 93-5809; amd. Sec. 25, Ch. 548, L. 1987.**

Compiler's Comments

1987 Amendment: In two places, after "the sheriff", inserted "or levying officer".

25-13-402. How writ executed. The sheriff or levying officer must execute the writ against the property of the judgment debtor no later than 60 days after receipt of the writ by levying on a sufficient amount of property, if there be sufficient, collecting or selling the things in action, and selling the other property and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within the view of the sheriff or levying officer, he must levy only on such part of the property as the judgment debtor may indicate if the property indicated be amply sufficient to satisfy the judgment and costs.

History: **En. Sec. 198, p. 83, Bannack Stat.; re-en. Sec. 220, p. 180, L. 1867; re-en. Sec. 270, p. 85, Cod. Stat. 1871; amd. Sec. 320, p. 125, L. 1877; re-en. Sec. 320, 1st Div. Rev. Stat. 1879; re-en. Sec. 331, 1st Div. Comp. Stat. 1887; re-en. Sec. 1224, C. Civ. Proc. 1895; re-en. Sec. 6827, Rev. C. 1907; re-en. Sec. 9431, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 691; re-en. Sec. 9431, R.C.M. 1935; R.C.M. 1947, 93-5823; amd. Sec. 3, Ch. 88, L. 1987; amd. Sec. 26, Ch. 548, L. 1987.**

Compiler's Comments

1987 Amendments: Chapter 88 near beginning of first sentence inserted 60-day limitation on execution of Writ.

Chapter 548 in first sentence, near beginning, and in third sentence, near middle, after "the sheriff", inserted "or levying officer".

Cross-References

Liability of Sheriff for failure to execute writ, 7-32-2131.

Conduct of sale, 25-13-704.

25-13-403. Security for costs when property seized. If the sheriff or levying officer will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of a writ of execution shall provide a bond or other security to pay for all costs which may be incurred as a result of the service of such writ.

History: **En. Sec. 4393, Pol. C. 1895; re-en. Sec. 3022, Rev. C. 1907; re-en. Sec. 4786, R.C.M. 1921; Cal. Pol. C. Sec. 4185; re-en. Sec. 4786, R.C.M. 1935; amd. Sec. 1, Ch. 426, L. 1977; R.C.M. 1947, 16-2714(part); amd. Sec. 27, Ch. 548, L. 1987.**

Compiler's Comments

1987 Amendment: Near beginning, after "the sheriff", inserted "or levying officer".

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.

Order to apply property to satisfaction of judgment, 25-14-107.

25-13-404. Return of the execution. (1) Except as provided in subsections (2) and (3), execution may be made returnable to the clerk of the court in which the judgment was rendered, at any time not less than 10 or more than 60 days after receipt of the recovery by the sheriff or levying officer following imposition of levy, as provided in 25-13-402.

(2) The writ of execution issued by the county treasurer under 15-16-401 may be made returnable, at any time not less than 10 or more than 90 days after its receipt by the sheriff or levying officer, to the county treasurer of the county in which the writ was issued.

(3) In compliance with the provisions of subsection (1) and in lieu of returning the writ of execution to the clerk of the court, the sheriff may enclose his return of the writ in an envelope to the officer, agent, or attorney who sent it and deposit it in the post office, prepaying the postage.

History: En. Sec. 212, p. 177, L. 1867; re-en. Sec. 253, p. 81, Cod. Stat. 1871; amd. Sec. 20, p. 57, L. 1874; re-en. Sec. 304, p. 119, L. 1877; re-en. Sec. 304, 1st Div. Rev. Stat. 1879; re-en. Sec. 315, 1st Div. Comp. Stat. 1887; re-en. Sec. 1213, C. Civ. Proc. 1895; re-en. Sec. 6816, Rev. C. 1907; re-en. Sec. 9419, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 683; re-en. Sec. 9419, R.C.M. 1935; R.C.M. 1947, 93-5804(part); amd. Sec. 107, Ch. 575, L. 1981; amd. Sec. 1, Ch. 91, L. 1983; amd. Sec. 4, Ch. 88, L. 1987; amd. Sec. 28, Ch. 548, L. 1987.

Compiler's Comments

1987 Amendments: Chapter 88 in (1) inserted reference to subsection (3), after "returnable" inserted "to the clerk of the court in which the judgment was rendered", after "60 days" substituted "after receipt of the recovery" for "after its receipt", and at end of subsection substituted "following imposition of levy, as provided in 25-13-402" for "to the clerk of the court in which the judgment was rendered"; and inserted (3).

Chapter 548 in (1) and (2), near end after "the sheriff", inserted "or levying officer".

Cross-References

Debtor to answer concerning his property when execution unsatisfied, 25-14-101.

Procedure when debtor withholding property from execution, arrest, 25-14-102.

25-13-405. Clerk to record returned execution when levy on real property. If any real estate be levied upon, the clerk must record the execution and the return thereto at large and certify the same under his hand as true copies in a book to be called the "execution book", which must be indexed, with the names of the plaintiffs and defendants in execution alphabetically arranged, and kept open at all times during office hours for the inspection of the public, without charge. It is evidence of the contents of the originals whenever they or any part thereof may be destroyed or mutilated.

History: En. Sec. 212, p. 177, L. 1867; re-en. Sec. 253, p. 81, Cod. Stat. 1871; amd. Sec. 20, p. 57, L. 1874; re-en. Sec. 304, p. 119, L. 1877; re-en. Sec. 304, 1st Div. Rev. Stat. 1879; re-en. Sec. 315, 1st Div. Comp. Stat. 1887; re-en. Sec. 1213, C. Civ. Proc. 1895; re-en. Sec. 6816, Rev. C. 1907; re-en. Sec. 9419, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 683; re-en. Sec. 9419, R.C.M. 1935; R.C.M. 1947, 93-5804(part).

Cross-References

Debtor to answer concerning his property when execution unsatisfied, 25-14-101.

25-13-406 through 25-13-410 reserved.

25-13-411. Execution against earnings of judgment debtor — affidavit of exemption — hearing. (1) A judgment debtor may exempt earnings for his personal services, as provided in 25-13-614, by filing an affidavit with the court that issued the writ of execution or attachment declaring that such earnings are necessary for the support of his family. The affidavit must include the address of the judgment debtor or his attorney for purposes of service of notice under subsection (2). Levy of execution of judgment is automatically stayed by the filing of an affidavit.

(2) When an affidavit of exemption is filed, the court shall immediately mail a copy of the affidavit to the judgment creditor and, upon motion of the judgment creditor, set the matter for hearing within 14 days to determine eligibility for and the amount of exemption, if any, under 25-13-614. The court shall mail a notice of hearing to the parties.

(3) Following the hearing on the affidavit, the court shall remove the stay, order the stay extended, or remove the stay to the extent of nonexempt property.

History: En. Sec. 2, Ch. 538, L. 1985.

Cross-References

Child support enforcement — administrative income withholding, Title 40, ch. 5, part 4.

Part 5

Property Subject to Execution

Part Cross-References

What property subject to attachment, 27-18-102.

Power of court to liquidate business corporation, 35-1-921.

Partner's right in partnership property, 35-10-502.

Execution against trespassing animals, 81-4-307.

Sale of unlawfully driven animals in manner as execution, 81-5-110.

Sale of livestock under supplementary Writ of Execution, 81-8-315.

25-13-501. What property subject to execution. All goods, chattels, moneys, and other property, both real and personal, or any interest therein of the judgment debtor, not exempt by law, and all property and rights of property seized and held under attachment in the action are liable to execution. Shares and interest in any corporation or company, debts and credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery may be attached on execution, in like manner as upon writs of attachment. Gold dust must be returned by the officer as so much money collected, at its current value, without exposing the same to sale. Until a levy, property is not affected by the execution.

History: En. Sec. 192, p. 81, Bannack Stat.; amd. Sec. 217, p. 178, L. 1867; re-en. Sec. 258, p. 82, Cod. Stat. 1871; re-en. Sec. 308, p. 121, L. 1877; re-en. Sec. 308, 1st Div. Rev. Stat. 1879; re-en. Sec. 319, 1st Div. Comp. Stat. 1887; re-en. Sec. 1218, C. Civ. Proc. 1895; re-en. Sec. 6821, Rev. C. 1907; re-en. Sec. 9424, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 688; re-en. Sec. 9424, R.C.M. 1935; R.C.M. 1947, 93-5810.

Cross-References

Return of damaged property to officer for sale, 27-17-404.

What property subject to attachment, 27-18-102.

25-13-502. Debts owed to judgment debtor. After the issuing of an execution against property and before its return, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt or so much thereof as may be necessary to satisfy the execution; and the sheriff's receipt is sufficient discharge for the amount so paid.

History: En. Sec. 217, p. 88, Bannack Stat.; re-en. Sec. 240, p. 184, L. 1867; re-en. Sec. 289, Cod. Stat. 1871; re-en. Sec. 340, p. 134, L. 1877; re-en. Sec. 340, 1st Div. Rev. Stat. 1879; re-en. Sec. 352, 1st Div. Comp. Stat. 1887; re-en. Sec. 1262, C. Civ. Proc. 1895; re-en. Sec. 6850, Rev.

C. 1907; re-en. Sec. 9456, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 716; re-en. Sec. 9456, R.C.M. 1935; R.C.M. 1947, 93-5903.

Cross-References

Debtors of judgment debtor and those holding property to answer, 25-14-103.

Order to apply property to satisfaction of judgment, 25-14-107.

25-13-503. Property claimed by third persons. If personal property levied upon be claimed by a third person, the same proceedings shall be had as provided in attachment in 27-18-602.

History: En. Sec. 1220, C. Civ. Proc. 1895; re-en. Sec. 6823, Rev. C. 1907; re-en. Sec. 9426, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 689; re-en. Sec. 9426, R.C.M. 1935; R.C.M. 1947, 93-5812.

Cross-References

Debtors of judgment debtor and those holding property to answer, 25-14-103.

Procedure when debt to or ownership of judgment debtor denied, 25-14-104.

Order to apply property to satisfaction of judgment, 25-14-107.

25-13-504. Garnishment of public officers. The provisions of 27-18-406, relating to the garnishment of public officers, apply to the levy of an execution.

History: En. Sec. 1243, C. Civ. Proc. 1895; re-en. Sec. 6846, Rev. C. 1907; re-en. Sec. 9452, R.C.M. 1921; re-en. Sec. 9452, R.C.M. 1935; R.C.M. 1947, 93-5844.

Cross-References

Money, credits, or other property in control of public officer or board, 27-18-406.

25-13-505. Personal property subject to a security interest. Personal property subject to a security interest may be taken on execution issued at the suit of a creditor of the debtor under the security agreement; but before the property is so taken, the officer levying the writ must pay or tender to the secured party the amount of the security agreement debt and interest or must deposit the same with the county treasurer of the county in which the financing statement covering the security agreement is filed, if such statement is filed with a county clerk and recorder, or if such statement is filed with another filing officer pursuant to law, then with such other filing officer, payable to the order of the secured party.

History: En. Sec. 1, Ch. 111, L. 1921; re-en. Sec. 9291, R.C.M. 1921; re-en. Sec. 9291, R.C.M. 1935; amd. Sec. 11-162, Ch. 264, L. 1963; R.C.M. 1947, 93-4338(part).

Cross-References

Property subject to security interest — disposition of proceeds, security agreement, 25-13-712.

Secured transactions, Title 30, ch. 9.

25-13-506. Duty of secured party. (1) The secured party under any security agreement of record shall, upon 15 days' notice in writing served upon him in person by any creditor of the debtor seeking to satisfy a judgment of such creditor against the debtor, be required to make and file in the office of the county clerk and recorder or other filing officer with whom the financing statement covering the security agreement is filed an affidavit showing the amount of the indebtedness then actually due and owing to the secured party; and such affidavit shall state the amount of the original obligation for which the security agreement was given as security, all additional advancement of money or property on the principal obligation since the date of the execution of the security agreement, all payments of whatsoever kind, whether on principal or interest, made by the debtor to the date of the execution of such affidavit by the secured party, and the balance then remaining due and unpaid to the secured party. If within 15 days from the service of any such demand in writing on the secured party by any creditor of the debtor, the secured party shall fail, refuse, or neglect to file the affidavit herein required, the security agreement shall be of no force or effect as against such creditor upon the seizure of any such personal property on execution.

(2) In the event the amount shown to be due is paid to the county treasurer or to a filing officer, as aforesaid, or to the secured party in satisfaction of the security agreement by any execution creditor against the debtor, the secured party shall be required to surrender to the county treasurer or such filing officer the security agreement and any note or other evidence of indebtedness secured thereby, which security agreement or other evidence of indebtedness shall be delivered by the secured party, county treasurer, or filing officer to the execution creditor.

History: En. Sec. 1, Ch. 111, L. 1921; re-en. Sec. 9291, R.C.M. 1921; re-en. Sec. 9291, R.C.M. 1935; amd. Sec. 11-162, Ch. 264, L. 1963; R.C.M. 1947, 93-4338(part).

Cross-References

Property subject to security interest — disposition of proceeds, security agreement, 25-13-712.

Secured transactions, Title 30, ch. 9.

Part 6

Property Exempt From Execution

Part Cross-References

Government property exempt from execution, 2-9-318.

PERS benefits exempt from execution, 19-3-105.

Teachers' retirement benefits exempt from execution, 19-4-706.

Judges' retirement benefits exempt from execution, 19-5-704.

Highway Patrol retirement benefits exempt from execution, 19-6-705.

Sheriffs' retirement benefits exempt from execution, 19-7-705.

Game Wardens' retirement benefits exempt from execution, 19-8-805.

Police retirement benefits exempt from execution, 19-9-1006, 19-10-504.

Firefighters' retirement benefits exempt from execution, 19-11-612.

Exempt property — bankruptcy proceedings, 31-2-106.

Exempt property not passed by general assignment, 31-2-227.

Fraternal benefit society payments exempt from execution, 33-7-511.

What partnership interest not subject to attachment, 35-10-502.

Cooperative share exempt from execution, 35-15-404.

Nonliability of members of rural cooperative utilities for debts of cooperative, 35-18-302.

Cemetery association property exempt from execution, 35-20-217.

Unemployment insurance benefits exempt from execution, 39-51-3105.

Workers' compensation benefits not liable for debts, 39-71-743.

Assistance not assignable or subject to legal process, 39-73-110.

Hail insurance benefits exempt from execution, 80-2-245.

25-13-601. Waiver of exemptions in unsecured note unenforceable. Any waiver of statutory exemption from execution in an unsecured promissory note shall be unenforceable.

History: En. Sec. 1, Ch. 172, L. 1965; R.C.M. 1947, 93-5813.1.

Cross-References

Uniform Commercial Code — commercial paper, Title 30, ch. 3.

25-13-602. Repealed. Sec. 6, Ch. 210, L. 1985.

History: En. Sec. 1, Ch. 120, L. 1933; re-en. Sec. 9430.1, R.C.M. 1935; R.C.M. 1947, 93-5819.

25-13-603 through 25-13-605 reserved.

25-13-606. Protection of property of residents. A resident of this state is entitled to the exemptions provided in this part.

History: En. Sec. 1, Ch. 302, L. 1987.

25-13-607. Claim enforceable against exempt property. Notwithstanding any other provision of this part, a creditor may levy against exempt property to enforce a claim for:

(1) the purchase price of the property; or

(2) a loan made for the express purpose of enabling the judgment debtor to purchase the property and used for that purpose.

History: En. Sec. 2, Ch. 302, L. 1987.

25-13-608. Property exempt without limitation. A judgment debtor is entitled to exemption from execution of the following:

(1) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;

(2) benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation;

(3) veterans' benefits;

(4) disability or illness benefits;

(5) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;

(6) maintenance and child support; and

(7) a burial plot for the judgment debtor and his family.

History: En. Sec. 3, Ch. 302, L. 1987.

25-13-609. Personal property exempt subject to value limitations. A judgment debtor is entitled to exemption from execution of the following:

(1) the judgment debtor's interest, not to exceed $4,500 in aggregate value, to the extent of a value not exceeding $600 in any item of property, in household furnishings and goods, appliances, jewelry, wearing apparel, books, firearms and other sporting goods, animals, feed, crops, and musical instruments;

(2) the judgment debtor's interest, not to exceed $1,200 in value, in one motor vehicle;

(3) the judgment debtor's interest, not to exceed $3,000 in value, in:

(a) any implements;

(b) professional books; or

(c) tools of the trade of the judgment debtor or a dependent of the judgment debtor; and

(4) the judgment debtor's interest, not to exceed $4,000 in value, in any unmatured life insurance contracts owned by him.

History: En. Sec. 4, Ch. 302, L. 1987.

25-13-610. Tracing exempt personal property. (1) If money or other property exempt under 25-13-608 and 25-13-609 has been sold or has been lost, damaged, or destroyed and the judgment debtor has been indemnified for it, he is entitled for 6 months to an exemption of proceeds that are traceable (for example, in a bank or savings account).

(2) Earnings exempt under 25-13-614 remain exempt for 45 days after receipt by and while in the possession of the judgment debtor in a form into which the exempt earnings are traceable (for example, in a bank or savings account).

(3) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor.

History: **En. Sec. 5, Ch. 302, L. 1987.**

25-13-611. Repealed. Sec. 11, Ch. 302, L. 1987.

History: **En. Sec. 1, Ch. 8, L. 1905; re-en. Sec. 6824, Rev. C. 1907; amd. Sec. 1, Ch. 232, L. 1921; re-en. Sec. 9427, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 690; re-en. Sec. 9427, R.C.M. 1935; R.C.M. 1947, 93-5813; amd. Sec. 1, Ch. 210, L. 1985.**

25-13-612. Repealed. Sec. 11, Ch. 302, L. 1987.

History: **Ap. p. Sec. 1222, C. Civ. Proc. 1895; amd. Sec. 2, Ch. 8, L. 1905; re-en. Sec. 6825, Rev. C. 1907; re-en. Sec. 9428, R.C.M. 1921; re-en. Sec. 9428, R.C.M. 1935; Sec. 93-5814, R.C.M. 1947; Ap. p. Sec. 1, Ch. 127, L. 1937; re-en. Sec. 9428.1, R.C.M. 1935; Sec. 93-5815, R.C.M. 1947; R.C.M. 1947, 93-5814(part), 93-5815; amd. Sec. 2, Ch. 210, L. 1985.**

25-13-613. Property necessary to carry out governmental functions. (1) In addition to the property mentioned in 25-13-611 [25-13-609(1)], there shall be exempt to all judgment debtors the following property:

(a) all fire engines, hooks, and ladders, with the cart, trucks, and carriages, hose, buckets, implements, and apparatus thereto appertaining, and all furniture and uniforms of any fire company or department organized under any laws of this state;

(b) all arms, uniforms, and accouterments required by law to be kept by any person and one gun to be selected by the debtor;

(c) all courthouses, jails, public offices, and buildings, lots, grounds, and personal property, the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to the courthouse, jail, and public offices belonging to any county of this state; and

(d) all cemeteries, public squares, parks, and places, public buildings, town halls, public markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining owned or held by any town or incorporated city or dedicated by such city or town to health, ornament, or public use or for the use of any fire or military company organized under the laws of the state.

(2) No article, however, or species of property mentioned in this section is exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage lien thereon, and no person not a bona fide resident of this state shall have the benefit of these exemptions.

History: **En. Sec. 1222, C. Civ. Proc. 1895; amd. Sec. 2, Ch. 8, L. 1905; re-en. Sec. 6825, Rev. C. 1907; re-en. Sec. 9428, R.C.M. 1921; re-en. Sec. 9428, R.C.M. 1935; R.C.M. 1947, 93-5814(part); amd. Sec. 3, Ch. 210, L. 1985.**

Compiler's Comments

Erroneous Reference: The reference in subsection (1) to 25-13-611 is erroneous. Section 25-13-611 was repealed by Ch. 302, L. 1987. Section 25-13-609(1), enacted by Ch. 302, appears to most closely correspond to the property formerly mentioned in 25-13-611.

Cross-References

Payment of judgments against the state, 2-9-315.

Payment of judgments against governmental entities, 2-9-316.

Attachment and execution against governmental entity, 2-9-318.

Payment of costs by governmental entities, Title 25, ch. 10, part 7.

Judgments against county or county officers, 25-13-205.

Garnishment of public officers, 25-13-504.

25-13-614. Earnings of judgment debtor. (1) No earnings are exempt unless the judgment debtor complies with 25-13-411.

(2) Except as provided in subsections (3) and (4), the maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subjected to garnishment may not exceed the lesser of:

(a) the amount by which his disposable earnings for the week exceed 30 times the federal minimum hourly wage in effect at the time the earnings are payable; or

(b) 25% of his disposable earnings for that week.

(3) The restrictions of subsection (2) do not apply in the case of an order or judgment for the maintenance or support of any person, issued by a court of competent jurisdiction or pursuant to an administrative procedure that is established by state law, affords substantial due process, and is subject to judicial review.

(4) (a) The maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subject to garnishment to enforce an order described in subsection (3) may not exceed:

(i) 50% of the judgment debtor's disposable earnings for that week if he is supporting his spouse or dependent child (other than a spouse or child for whom the order is issued); or

(ii) 60% of the judgment debtor's disposable earnings for that week if he is not supporting a spouse or dependent child described in subsection (4)(a)(i).

(b) However, the amount stated in (4)(a)(i) may be 55% and the amount stated in (4)(a)(ii) may be 65% if such earnings are being garnished to enforce an order for maintenance or support for a period prior to the 12-week period that ends with the beginning of such workweek.

(5) For the purposes of this section, the definitions of earnings, disposable earnings, and garnishment are as set forth in 15 U.S.C. 1672.

History: En. Sec. 1222, C. Civ. Proc. 1895; re-en. Sec. 6825, Rev. C. 1907; amd. Sec. 1, Ch. 48, L. 1913; re-en. Sec. 9429, R.C.M. 1921; amd. Sec. 1, Ch. 3, L. 1933; re-en. Sec. 9429, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1939; R.C.M. 1947, 93-5816; amd. Sec. 7, Ch. 370, L. 1981; amd. Sec. 1, Ch. 153, L. 1983; amd. Sec. 1, Ch. 538, L. 1985; amd. Sec. 7, Ch. 302, L. 1987.

Compiler's Comments

1987 Amendment: Redesignated former (2)(a) as (1); and substituted (2) through (5) for former language that read: "Except as provided in subsection (2), the earnings of the judgment debtor for his personal services rendered during the 45-day period prior to the levy of execution or attachment are exempt to the extent such earnings are necessary for the support of his family.

(2) (a) No earnings are exempt unless the judgment debtor complies with 25-13-411.

(b) Earnings are exempt under this section from judgments or orders for maintenance or child support only to the extent allowed by 15 U.S.C. 1673.

(c) One-half of earnings are not exempt for debts incurred by the judgment debtor or his family for gasoline and the common necessaries of life.

(3) The words "his family", as used in this section, except to the extent that these words include a person covered by a judgment or order under subsection (2), are to be construed to include:

(a) the judgment debtor's spouse;

(b) every person who resides with the judgment debtor under his care or maintenance and who is:

(i) a minor child of the judgment debtor or of his spouse or former spouse;

(ii) a minor grandchild, brother, or sister or minor child of a brother or sister of the judgment debtor or of his spouse;

(iii) a father, mother, grandfather, or grandmother of the judgment debtor or of his spouse or former spouse;

(iv) an unmarried sister, brother, or any other relative of the judgment debtor mentioned in this section who has attained the age of majority and is unable to care for or support himself."

25-13-615. Homestead. The homestead of a judgment debtor exempt from execution is provided for in Title 70, chapter 32.

History: En. Sec. 1223, C. Civ. Proc. 1895; re-en. Sec. 6826, Rev. C. 1907; re-en. Sec. 9430, R.C.M. 1921; re-en. Sec. 9430, R.C.M. 1935; R.C.M. 1947, 93-5818.

25-13-616. Repealed. Sec. 11, Ch. 302, L. 1987.

History: En. Sec. 1222, C. Civ. Proc. 1895; amd. Sec. 2, Ch. 8, L. 1905; re-en. Sec. 6825, Rev. C. 1907; re-en. Sec. 9428, R.C.M. 1921; re-en. Sec. 9428, R.C.M. 1935; R.C.M. 1947, 93-5814(part); amd. Sec. 4, Ch. 210, L. 1985.

25-13-617. Repealed. Sec. 11, Ch. 302, L. 1987.

History: En. Sec. 2, Ch. 120, L. 1933; re-en. Sec. 9430.2, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1941; R.C.M. 1947, 93-5820; amd. Sec. 8, Ch. 370, L. 1981; amd. Sec. 5, Ch. 210, L. 1985.

Part 7

Sale on Execution

Part Cross-References

Return of damaged property for sale by officer, 27-17-404.

Sale of attached property, Title 27, ch. 18, part 8.

Warranty upon judicial sale, 30-11-222.

Sale of abandoned vehicles in manner of sale on execution, 61-12-404.

25-13-701. Notice of sale on execution. (1) Before the sale of the property on execution, notice thereof must be given as follows:

(a) in case of perishable property, by posting written notice of the time and place of the sale in three public places in the county where the sale is to take place, for such time as may be reasonable considering the character and condition of the property;

(b) in case of other personal property, by posting a similar notice in three public places in the county where the sale is to take place, for not less than 5 days or more than 10 days, and by publishing a copy of the notice at least 1 week before the sale in a newspaper of general circulation published in the county, if there be one;

(c) in case of real property, by posting a similar notice, particularly describing the property, for 20 days in three public places in the county where the property is situated and also where the property is to be sold, which may be either at the courthouse or on the premises, and publishing a copy thereof once a week for the same period in some newspaper published in the county, if there be one, which notice shall be substantially as follows:

SHERIFF'S SALE

..........., Plaintiff,
vs.

..........., Defendant,

To be sold at sheriff's sale on the .... day of ...., 19.., at .... (Here insert brief description of property.)

Signed ...., Sheriff

(2) Any sheriff publishing a notice not in accordance with the form set forth in subsection (1)(c) and which shall cost more than such a notice shall not be entitled to any costs for publication of the same but shall be personally liable for the payment of such publication.

History: En. Sec. 199, p. 83, Bannack Stat.; amd. Sec. 221, p. 180, L. 1867; re-en. Sec. 271, p. 86, Cod. Stat. 1871; amd. Sec. 20, p. 57, L. 1874; re-en. Sec. 321, p. 126, L. 1877; re-en. Sec. 321, 1st Div. Rev. Stat. 1879; re-en. Sec. 332, 1st Div. Comp. Stat. 1887; amd. Sec. 1225, C. Civ. Proc. 1895; re-en. Sec. 6828, Rev. C. 1907; re-en. Sec. 9432, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 692; re-en. Sec. 9432, R.C.M. 1935; R.C.M. 1947, 93-5824; amd. Sec. 1, Ch. 235, L. 1985; amd. Sec. 5, Ch. 88, L. 1987.

Compiler's Comments

1987 Amendment: In (1)(a), (1)(b), and (1)(c) substituted "the county" for "the township or city"; and made minor changes in phraseology.

Cross-References

County printing, Title 7, ch. 5, part 24.

Publication of legal notices, Title 18, ch. 7, part 2.

Disposal of foreclosed agricultural land, Title 25, ch. 13, part 9.

25-13-702. Penalty for selling without notice or destruction of notice. An officer selling without the notice prescribed by 25-13-701 forfeits $500 to the aggrieved party in addition to his actual damages; and a person willfully taking down or defacing the notice posted, if done before the sale or satisfaction of the judgment (if the judgment be satisfied before sale), forfeits $500.

History: En. Sec. 200, p. 84, Bannack Stat.; re-en. Sec. 222, p. 180, L. 1867; re-en. Sec. 272, p. 86, Cod. Stat. 1871; re-en. Sec. 322, p. 127, L. 1877; re-en. Sec. 322, 1st Div. Rev. Stat. 1879; re-en. Sec. 333, 1st Div. Comp. Stat. 1887; re-en. Sec. 1226, C. Civ. Proc. Sec. 1895; re-en. Sec. 6829, Rev. C. 1907; re-en. Sec. 9433, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 693; re-en. Sec. 9433, R.C.M. 1935; R.C.M. 1947, 93-5825.

Cross-References

Damages, Title 27, ch. 1, part 2.

25-13-703. Postponement of sale. Good cause therefor appearing, the officer holding the execution may postpone any sale noticed thereunder for a period not exceeding 15 days, by public proclamation at the time and place fixed in the notice of sale and by posting a notice in three public places in the township where the property has previously been noticed to be sold.

History: En. Sec. 1, Ch. 120, L. 1915; re-en. Sec. 9435, R.C.M. 1921; re-en. Sec. 9435, R.C.M. 1935; R.C.M. 1947, 93-5827.

25-13-704. Conduct of sale. (1) All sales of property under execution must be made at auction to the highest bidder, between the hours of 9 a.m. and 5 p.m. After sufficient property has been sold to satisfy the execution, no more can be sold. Neither the officer holding the execution nor his deputy can become a purchaser or be interested in any purchase at such sale.

(2) When the sale is of personal property capable of manual delivery, it must be within view of those who attend the sale and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property consisting of several known lots or parcels, they must be sold separately, or

when a portion of such real property is claimed by a third person and he requires it to be sold separately, such portion must be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold when such property consists of several known lots or parcels or of articles which can be sold to advantage separately, and the sheriff must follow such directions.

History: En. Sec. 201, p. 84, Bannack Stat.; amd. Sec. 223, p. 180, L. 1867; re-en. Sec. 273, p. 86, Cod. Stat. 1871; re-en. Sec. 323, p. 127, L. 1877; re-en. Sec. 323, 1st Div. Rev. Stat. 1879; re-en. Sec. 334, 1st Div. Comp. Stat. 1887; re-en. Sec. 1227, C. Civ. Proc. 1895; re-en. Sec. 6830, Rev. C. 1907; re-en. Sec. 9434, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 694; re-en. Sec. 9434, R.C.M. 1935; R.C.M. 1947, 93-5826.

Cross-References

Execution against property of judgment debtor, 25-13-304.

How writ executed, 25-13-402.

25-13-705. Procedure when purchaser refuses to pay. If a purchaser refuses to pay the amount bid by him for the property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss be occasioned thereby, the officer may recover the amount of such loss, with costs, from the bidder so refusing, in any court of competent jurisdiction, and the person refusing to pay the costs which have accrued by reason of his bid shall be deemed guilty of contempt of court and punished accordingly.

History: En. Sec. 202, p. 85, Bannack Stat.; amd. Sec. 224, p. 181, L. 1867; re-en. Sec. 274, p. 86, Cod. Stat. 1871; amd. Sec. 324, p. 127, L. 1877; re-en. Sec. 324, 1st Div. Rev. Stat. 1879; re-en. Sec. 335, 1st Div. Comp. Stat. 1887; en. Sec. 1228, C. Civ. Proc. 1895; re-en. Sec. 6831, Rev. C. 1907; re-en. Sec. 9436, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 695; re-en. Sec. 9436, R.C.M. 1935; R.C.M. 1947, 93-5828.

Cross-References

Contempts, Title 3, ch. 1, part 5.

25-13-706. Rejection of subsequent bids after refusal to pay. When a purchaser refuses to pay, the officer may, in his discretion, thereafter reject any subsequent bid of such purchaser.

History: En. Sec. 325, p. 128, L. 1877; re-en. Sec. 325, 1st Div. Rev. Stat. 1879; re-en. Sec. 336, 1st Div. Comp. Stat. 1887; re-en. Sec. 1229, C. Civ. Proc. 1895; re-en. Sec. 6832, Rev. C. 1907; re-en. Sec. 9437, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 696; re-en. Sec. 9437, R.C.M. 1935; R.C.M. 1947, 93-5829.

25-13-707. Liability of officer after resale. Sections 25-13-705 and 25-13-706 must not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser and the amount collected from the purchaser refusing to pay.

History: En. Sec. 326, p. 128, L. 1877; re-en. Sec. 326, 1st Div. Rev. Stat. 1879; re-en. Sec. 337, 1st Div. Comp. Stat. 1887; re-en. Sec. 1230, C. Civ. Proc. 1895; re-en. Sec. 6833, Rev. C. 1907; re-en. Sec. 9438, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 697; re-en. Sec. 9438, R.C.M. 1935; R.C.M. 1947, 93-5830.

Cross-References

Judgments against county or county officers, 25-13-205.

25-13-708. Conveyance of personal property capable of manual delivery. When the purchaser of any personal property capable of manual delivery pays the purchase money, the officer making the sale must deliver to the purchaser the property and, if desired, execute and deliver to him a certificate of the sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied.

History: En. Sec. 205, p. 85, Bannack Stat.; re-en. Sec. 227, p. 181, L. 1867; re-en. Sec. 277, p. 87, Cod. Stat. 1871; re-en. Sec. 327, p. 128, L. 1877; re-en. Sec. 327, 1st Div. Rev. Stat. 1879; re-en. Sec. 338, 1st Div. Comp. Stat. 1887; amd. Sec. 1231, C. Civ. Proc. 1895; re-en. Sec. 6834, Rev. C. 1907; re-en. Sec. 9439, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 698; re-en. Sec. 9439, R.C.M. 1935; R.C.M. 1947, 93-5831.

25-13-709. Conveyance of personal property not capable of manual delivery. When the purchaser of any personal property not capable of manual delivery pays the purchase money, the officer making the sale must execute and deliver to the purchaser a certificate of sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied.

History: En. Sec. 228, p. 181, L. 1867; re-en. Sec. 278, p. 87, Cod. Stat. 1871; re-en. Sec. 328, p. 128, L. 1877; re-en. Sec. 328, 1st Div. Rev. Stat. 1879; re-en. Sec. 339, 1st Div. Comp. Stat. 1887; amd. Sec. 1232, C. Civ. Proc. 1895; re-en. Sec. 6835, Rev. C. 1907; re-en. Sec. 9440, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 699; re-en. Sec. 9440, R.C.M. 1935; R.C.M. 1947, 93-5832.

25-13-710. Real property — what interest transferred. Upon a sale of real property, the purchaser is substituted to and acquires the right, title, interest, and claim of the judgment debtor thereto; and when the estate is less than a leasehold of 2 years' unexpired term, the sale is absolute. In all other cases, the property is subject to redemption, as provided in part 8 of this chapter.

History: En. Sec. 229, p. 181, L. 1867; re-en. Sec. 279, p. 87, Cod. Stat. 1871; re-en. Sec. 329, p. 128, L. 1877; re-en. Sec. 329, 1st Div. Rev. Stat. 1879; re-en. Sec. 340, 1st Div. Comp. Stat. 1887; re-en. Sec. 1233, C. Civ. Proc. 1895; re-en. Sec. 6836, Rev. C. 1907; re-en. Sec. 9441, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 700; re-en. Sec. 9441, R.C.M. 1935; R.C.M. 1947, 93-5833(part).

25-13-711. Real property — certificate of sale. (1) Upon a sale of real property, the officer must give to the purchaser a certificate of sale, containing:

(a) a particular description of the property sold;
(b) the price bid for each distinct lot or parcel;
(c) the whole price paid;
(d) when subject to redemption, a statement to that effect.

(2) A duplicate of such certificate must be filed by the officer in the office of the county clerk.

History: En. Sec. 229, p. 181, L. 1867; re-en. Sec. 279, p. 87, Cod. Stat. 1871; re-en. Sec. 329, p. 128, L. 1877; re-en. Sec. 329, 1st Div. Rev. Stat. 1879; re-en. Sec. 340, 1st Div. Comp. Stat. 1887; re-en. Sec. 1233, C. Civ. Proc. 1895; re-en. Sec. 6836, Rev. C. 1907; re-en. Sec. 9441, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 700; re-en. Sec. 9441, R.C.M. 1935; R.C.M. 1947, 93-5833(part).

25-13-712. Property subject to a security interest — disposition of proceeds, security agreement. (1) When the property taken under 25-13-505 is sold under process, the officer levying the writ must apply the proceeds of the sale as follows:

(a) to the repayment of the sum paid to the secured party, with interest from the date of such payment; and

(b) the balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.

(2) In the event the property is sold under execution, such creditor shall be required to deliver to the debtor the security agreement and any note or other evidence of indebtedness secured thereby obtained from the secured party when the property is sold for the amount of the indebtedness under the security agreement or an amount in excess thereof.

History: En. Sec. 1, Ch. 111, L. 1921; re-en. Sec. 9291, R.C.M. 1921; re-en. Sec. 9291, R.C.M. 1935; amd. Sec. 11-162, Ch. 264, L. 1963; R.C.M. 1947, 93-4338(part).

Cross-References

Execution upon property subject to security interest, 25-13-505, 25-13-506.

Secured transactions, Title 30, ch. 9.

25-13-713. Procedure when sale invalidated, revival of judgment. (1) If the purchaser of real property sold on execution or his successor in interest be evicted therefrom in consequence of irregularities in the proceedings concerning the sale or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor.

(2) If the purchaser of property at sheriff's sale or his successor in interest fail to recover possession in consequence of irregularity in the proceedings concerning the sale or because the property sold was not subject to execution and sale, the court having jurisdiction thereof shall, on petition of such party in interest or his attorney, revive the original judgment for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore. When so revived, the said judgment shall have the same effect as an original judgment of the said court of that date, bearing interest as aforesaid; and any other or after-acquired property, rents, issues, or profits of the said debtor shall be liable to levy and sale under execution in satisfaction of such debt, but no property of such debtor sold bona fide before the filing of such petition shall be subject to the lien of said judgment. The notice of the filing of such petition shall be made by filing a notice thereof in the office of the county clerk where such property may be situated, and said judgment shall be revived in the name of the original plaintiff or plaintiffs for the use of said petitioner, the party in interest.

History: En. Sec. 237, p. 183, L. 1867; re-en. Sec. 286, p. 89, Cod. Stat. 1871; re-en. Sec. 336, p. 132, L. 1877; re-en. Sec. 336, 1st Div. Rev. Stat. 1879; re-en. Sec. 347, 1st Div. Comp. Stat. 1887; re-en. Sec. 1241, C. Civ. Proc. 1895; re-en. Sec. 6844, Rev. C. 1907; re-en. Sec. 9450, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 708; re-en. Sec. 9450, R.C.M. 1935; R.C.M. 1947, 93-5842.

25-13-714. Validation of defective judicial sales. All judicial sales of real property prior to January 1, 1973, provided no action is pending on July 1, 1973, to set such sale aside, where made in this state on proceedings to satisfy valid judgments or decrees of any court and the moneys bidden thereon paid to the officer making such sale, shall be valid and sufficient in law to sustain a sheriff's deed based on such sale and, when no such deed has been executed, shall entitle such purchaser to such deed; and such deed, if now or when executed, shall be sufficient to convey all the title of the judgment debtor at the time of such sale in the premises so sold to the purchaser at said sale, and all defects or irregularities in the issuance of execution, the manner of making or conducting the sale, or the recitals or references in such deed shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

History: **En. Sec. 1, Ch. 80, L. 1973; R.C.M. 1947, 93-5846.**

Part 8

Redemption of Real Property

Part Cross-References

Docketing of judgment — lien, 25-9-301.

Rights of redemption applicable, 71-1-228.

Action to redeem mortgage, 71-1-230.

Redemption by multiple mortgagors, 71-1-231.

Liens generally, Title 71, ch. 3.

25-13-801. Who may redeem. (1) Property sold subject to redemption, as provided by 25-13-710, or any part sold separately may be redeemed in the manner hereinafter provided by the following persons or their successors in interest:

(a) the judgment debtor, the judgment debtor's spouse, or his successor in interest in the whole or any part of the property and, if the judgment debtor or successor be a corporation, a stockholder thereof;

(b) a creditor having a lien by judgment, mortgage, or attachment on the property sold or on some share or part thereof subsequent to that on which the property is sold. If a corporation be such creditor, then any stockholder thereof may redeem.

(2) The persons mentioned in subsection (1)(b) of this section are, in this part, termed "redemptioners".

History: **En. Sec. 230, p. 181, L. 1867; re-en. Sec. 280, p. 87, Cod. Stat. 1871; re-en. Sec. 330, p. 129, L. 1877; re-en. Sec. 330, 1st Div. Rev. Stat. 1879; re-en. Sec. 341, 1st Div. Comp. Stat. 1887; amd. Sec. 1234, C. Civ. Proc. 1895; re-en. Sec. 6837, Rev. C. 1907; amd. Sec. 1, Ch. 107, L. 1913; re-en. Sec. 9442, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 701; amd. Sec. 1, Ch. 16, L. 1927; re-en. Sec. 9442, R.C.M. 1935; amd. Sec. 55, Ch. 535, L. 1975; R.C.M. 1947, 93-5834.**

Cross-References

Docketing of judgment — lien, 25-9-301.

Disposal of foreclosed agricultural land, Title 25, ch. 13, part 9.

Prejudgment attachment, Title 27, ch. 18.

25-13-802. Time for redemption — amount to be paid. The judgment debtor or redemptioner may redeem the property from the purchaser any time within 1 year after the sale on paying the purchaser:

(1) the amount of his purchase with ½ of 1% per month thereon in addition, up to the time of redemption;

(2) the amount of any assessment or taxes which the purchaser may have paid thereon after purchase and interest on such amount; and

(3) if the purchaser be also a creditor having a prior lien to that of the redemptioner other than the judgment under which such purchase was made, the amount of such lien with interest.

History: **En. Sec. 231, p. 181, L. 1867; re-en. Sec. 281, p. 88, Cod. Stat. 1871; amd. Sec. 331, p. 129, L. 1877; re-en. Sec. 331, 1st Div. Rev. Stat. 1879; re-en. Sec. 342, 1st Div. Comp. Stat. 1887; amd. Sec. 1235, C. Civ. Proc. 1895; re-en. Sec. 6838, Rev. C. 1907; re-en. Sec. 9443, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 702; re-en. Sec. 9443, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1937; R.C.M. 1947, 93-5835.**

Cross-References

"Year" defined, 1-1-301.

25-13-803. Subsequent redemptions — when permitted, amount paid. (1) If property be so redeemed by a redemptioner, another redemptioner may, within 60 days after the last redemption, again redeem it from the last redemptioner on paying the sum on such last redemption with interest thereon at the rate of ½ of 1% per month in addition, the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him with like interest on such amount, and the amount of any liens held by the said last redemptioner prior to his own, with interest; but the judgment under which the property was so sold need not be so paid as a lien. The property may be again, and as often as any redemptioner is so disposed, redeemed from any previous redemptioner, within 60 days after the last redemption, on paying the sum paid on the last previous redemption with interest thereon at the rate of ½ of 1% per month, the amount of any assessment or taxes which the last previous redemptioner paid after the redemption by him with like interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with like interest.

(2) If the judgment debtor or the judgment debtor's spouse redeem, the judgment debtor or the spouse must make the same payments as are required to effect a redemption by a redemptioner.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(part).

25-13-804. Redemption by stockholder or corporation. (1) If a stockholder of a corporation redeems, the corporation, within 1 year after the date of sale, may redeem by paying to the redemptioner or the sheriff for his benefit the amount paid to effect the redemption, with interest thereon at the rate of ½ of 1% per month from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the redemptioner, with like interest thereon.

(2) When a stockholder redeems, any other stockholder or stockholders may, at any time after such redemption and within 60 days after the expiration of 1 year from the date of sale, contribute to the redemption by paying to the redeeming stockholder or depositing with the sheriff for his benefit a sum which bears the same proportion to the amount necessary to redeem which the number of shares owned by such contributing stockholder or stockholders bears to the number of shares of such corporation outstanding, with interest on such sum from the date of redemption until the date of contribution at the rate of ½ of 1% per month, together with a like proportion of the taxes or assessments paid by such redeeming stockholder, with like interest thereon; and if the corporation does not redeem the property within the time and in the manner and form as aforesaid, the said redeeming and contributing stockholders shall be entitled to receive a sheriff's deed for such property so redeemed and shall succeed to the said property as tenants in common in such proportions, respectively, as they shall respectively pay or contribute to such redemption as aforesaid. The redeeming or contributing stockholder shall, in all cases when applying to redeem or contribute as aforesaid, present

an affidavit setting forth the number of shares of stock owned by him and, to the best of his knowledge, the number of shares of stock of the corporation outstanding.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(3).

25-13-805. Redemption by debtor from spouse. If the spouse of a judgment debtor redeem, the judgment debtor, within 1 year after the date of sale, may redeem by paying the spouse or the spouse's successors in interest or the sheriff for the benefit of the spouse or the successors in interest of the spouse the amount paid to effect the redemption, with interest thereon at the rate of ½ of 1% per month from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the spouse or the successors in interest of the spouse, with like interest thereon.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(4).

25-13-806. Notice of redemption, liens, and taxes and assessments paid. Written notice of redemption must be given to the sheriff and a duplicate filed with the county clerk, and if any taxes or assessments are paid by the redemptioner or if he has or acquired any liens other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and filed with the county clerk, and if such notice be not filed, the property may be redeemed without paying such tax, assessments, or lien.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(part).

Cross-References

Liability of clerk relating to duties as recorder, 7-4-2623.

Fees of County Clerk, 7-4-2631.

25-13-807. Papers redemptioner must produce. A redemptioner must produce, to the officer or person from whom he seeks to redeem, and serve with his notice to the sheriff:

(1) a copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court or by the clerk of the district court in the county where the judgment is docketed; or if he redeem upon a mortgage or other lien, a note of the record thereof, certified by the county clerk; or if upon an attachment, a copy of the affidavit of attachment, certified by the clerk of the district court;

(2) a copy of any assignment necessary to establish his claim, verified by the affidavit of himself or of a subscribing witness thereto;

(3) an affidavit by himself or his agent showing the amount then actually due upon the lien.

History: En. Sec. 234, p. 182, L. 1867; re-en. Sec. 284, p. 88, Cod. Stat. 1871; re-en. Sec. 334, p. 131, L. 1877; re-en. Sec. 334, 1st Div. Rev. Stat. 1879; re-en. Sec. 345, 1st Div. Comp. Stat. 1887; amd. Sec. 1238, C. Civ. Proc. 1895; re-en. Sec. 6841, Rev. C. 1907; re-en. Sec. 9446, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 705; re-en. Sec. 9446, R.C.M. 1935; R.C.M. 1947, 93-5838.

Cross-References

Search of records, 7-4-2621.

25-13-808. To whom redemption money paid. The payment mentioned in 25-13-802 through 25-13-806 may be made to the purchaser or redemptioner, as the case may be, or for him to the officer who made the sale or, in case his term of office has expired, to his successor in office.

History: En. Sec. 233, p. 182, L. 1867; en. Sec. 283, p. 88, Cod. Stat. 1871; re-en. Sec. 333, p. 129, L. 1877; re-en. Sec. 333, 1st Div. Rev. Stat. 1879; re-en. Sec. 344, 1st Div. Comp. Stat. 1887; re-en. Sec. 1237, C. Civ. Proc. 1895; re-en. Sec. 6840, Rev. C. 1907; re-en. Sec. 9445, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 704; re-en. Sec. 9445, R.C.M. 1935; R.C.M. 1947, 93-5837(part).

25-13-809. Effect of redemption by debtor or debtor's spouse — certificate of redemption. (1) If the debtor redeem, the effect of the sale is terminated and the debtor is restored to his own estate. If the spouse redeem, such spouse shall become the owner of the debtor spouse's interest, subject to any liens thereon at the time of the execution sale.

(2) Upon a redemption by a debtor or the debtor's spouse, the person to whom the payment was made must execute and deliver to him or her a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the county clerk of the county in which the property is situated, and the county clerk must note the record thereof in the margin of the record of the certificate of sale.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(part).

Cross-References

General provisions — proof and acknowledgment, Title 1, ch. 5, part 1.

Acknowledgment, Title 1, ch. 5, part 2.

Power of judicial officers to take acknowledgments, 3-1-404.

25-13-810. When purchaser entitled to conveyance. If no redemption be made within 1 year after the sale, the purchaser or his assignee is entitled to a conveyance; or if so redeemed, whenever 60 days have elapsed and no other redemption has been made and notice thereof given and the time for redemption has expired, the last redemptioner or his assignee is entitled to a sheriff's deed; but in all cases, the judgment debtor shall have the entire period of 1 year from the date of the sale to redeem the property.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(part).

Cross-References

"Year" defined, 1-1-301.

25-13-811. Who to execute conveyance. In all cases when, under the provisions of this chapter, a purchaser of property at execution sale shall be entitled to a conveyance of the same, such conveyance shall be executed to him by the officer who made the sale if he still be in office, but in the case the officer who made such sale is not in office at the time the purchaser may be entitled to such conveyance, then the conveyance shall be executed by his successor in office.

History: En. Sec. 233, p. 182, L. 1867; en. Sec. 283, p. 88, Cod. Stat. 1871; re-en. Sec. 333, p. 129, L. 1877; re-en. Sec. 333, 1st Div. Rev. Stat. 1879; re-en. Sec. 344, 1st Div. Comp. Stat. 1887; re-en. Sec. 1237, C. Civ. Proc. 1895; re-en. Sec. 6840, Rev. C. 1907; re-en. Sec. 9445, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 704; re-en. Sec. 9445, R.C.M. 1935; R.C.M. 1947, 93-5837(part).

25-13-812 through 25-13-820 reserved.

25-13-821. Possession of lands during redemption period. The purchaser of lands at execution sales is not entitled to the possession thereof as against the execution debtor during the period of redemption allowed by law while said execution debtor personally occupies the land as a home for himself and his family. The intention hereof being to insure to such debtor the possession of his land during the year of redemption.

History: En. Sec. 1, Ch. 230, L. 1921; re-en. Sec. 9449, R.C.M. 1921; amd. Sec. 1, Ch. 150, L. 1933; re-en. Sec. 9449, R.C.M. 1935; R.C.M. 1947, 93-5841(part).

25-13-822. Rents and profits during redemption period, accounting. (1) The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, are entitled to receive from the tenant in possession the rents of the property sold or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser or his or their assigns from the property thus sold preceding such redemption, the amount of such rents and profits shall be a credit upon the redemption money to be paid.

(2) If the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing of such purchaser or creditor or his assigns a written and verified statement of the amount of such rents and profits thus received, the period for redemption is extended 5 days after such sworn statement is given by such purchaser or his assigns to such redemptioner or debtor. If such purchaser or his assigns shall, for a period of 1 month from and after such demand, fail or refuse to give such statement, such redemptioner or debtor may bring an action in any court of competent jurisdiction to compel an accounting and disclosure of such rents and profits, and until 15 days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor.

History: En. Sec. 236, p. 183, L. 1867; rep. Sec. 751, p. 187, Cod. Stat. 1871; en. Sec. 1240, C. Civ. Proc. 1895; re-en. Sec. 6843, Rev. C. 1907; re-en. Sec. 9448, R.C.M. 1921; Cal. C. Civ. Proc. 707; re-en. Sec. 9448, R.C.M. 1935; R.C.M. 1947, 93-5840.

25-13-823. Restraint of waste during redemption period. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it is not waste for the person in possession of the property at the time of sale or entitled to possession afterward, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used, to use it in the ordinary course of husbandry, to make the necessary repairs of buildings thereon, or to use wood or timber on the property therefor or for the repair of fences or for fuel for his family while he occupies the property.

History: **En. Sec. 235, p. 182, L. 1867; re-en. Sec. 285, p. 89, Cod. Stat. 1871; re-en. Sec. 335, p. 131, L. 1877; re-en. Sec. 335, 1st Div. Rev. Stat. 1879; re-en. Sec. 346, 1st Div. Comp. Stat. 1887; re-en. Sec. 1239, C. Civ. Proc. 1895; re-en. Sec. 6842, Rev. C. 1907; re-en. Sec. 9447, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 706; re-en. Sec. 9447, R.C.M. 1935; R.C.M. 1947, 93-5839.**

Cross-References

When defendant may be arrested, 27-16-102.

Injunctions, Title 27, ch. 19.

General duty of care, 28-1-201.

Waste prohibited, 71-1-106.

Injunction to prevent injury to property, 71-1-227.

25-13-824. Enjoining injury to property after sale and before conveyance. The court or judge may, by injunction, upon good cause shown, restrain the party in possession from doing any act to the injury of real property after a sale on execution, before a conveyance.

History: **En. Sec. 240, p. 93, Bannack Stat.; re-en. Sec. 261, p. 188, L. 1867; re-en. Sec. 310, p. 95, Cod. Stat. 1871; re-en. Sec. 360, p. 139, L. 1877; re-en. Sec. 360, 1st Div. Rev. Stat. 1879; re-en. Sec. 372, 1st Div. Comp. Stat. 1887; re-en. Sec. 1318, C. Civ. Proc. 1895; re-en. Sec. 6878, Rev. C. 1907; re-en. Sec. 9496, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 745; re-en. Sec. 9496, R.C.M. 1935; R.C.M. 1947, 93-6220(part).**

Cross-References

When defendant may be arrested, 27-16-102.

Injunctions, Title 27, ch. 19.

General duty of care, 28-1-201.

Waste prohibited, 71-1-106.

Injunction to prevent injury to property, 71-1-227.

25-13-825. Damages for injury to property after sale and before conveyance. When real property has been sold on execution, the purchaser thereof or any person who may have succeeded to his interest may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession after sale and before possession is delivered under the conveyance.

History: **En. Sec. 262, p. 188, L. 1867; re-en. Sec. 311, p. 95, L. 1871; re-en. Sec. 361, p. 139, L. 1877; re-en. Sec. 361, 1st Div. Rev. Stat. 1879; re-en. Sec. 373, 1st Div. Comp. Stat. 1887; re-en. Sec. 1319, C. Civ. Proc. 1895; re-en. Sec. 6879, Rev. C. 1907; re-en. Sec. 9497, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 746; re-en. Sec. 9497, R.C.M. 1935; R.C.M. 1947, 93-6221.**

Cross-References

Injury to property defined, 27-1-106.

Damages generally, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Part 9

Disposal of Foreclosed Agricultural Land

25-13-901. *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Agricultural land" means real property that is principally used for the production of livestock, poultry, field crops, fruit, or other animal or vegetable matter for food or fiber.

(2) "Holder of foreclosed agricultural land" means a national- or state-chartered bank, a mutual or stock insurance company regulated by any state, a mortgage company, a farm credit system lender, or a state or federal agency that has acquired the right to dispose of agricultural land through foreclosure of a mortgage on the land or through execution of a judgment obtained by it against the immediately preceding owner of the land. *(Terminates June 30, 1996—sec. 6, Ch. 472, L. 1987.)*

History: En. Sec. 1, Ch. 472, L. 1987.

25-13-902. *(Temporary)* **Right of first refusal.** (1) A holder of foreclosed agricultural land shall, when leasing such land or any portion thereof to a third party, make a good faith offer to lease the land or portion thereof to the immediately preceding owner if such owner has financial resources and farm management skills and experience to assure a reasonable prospect of success in the proposed farming operation. The offer to lease land to the immediately preceding owner must be upon the same terms and conditions offered by a third party that are acceptable to the lessor.

(2) A holder of foreclosed agricultural land shall, when selling such land or any portion thereof to a third party, make a good faith offer to sell the land or portion thereof to the immediately preceding owner for the same price offered by a third party that is acceptable to the seller.

(3) An offer to lease to the immediately preceding owner is required each time the foreclosed agricultural land is leased to a third party, except that once the immediately preceding owner fails to meet the terms of a lease offer, the right to meet future offers is extinguished and no offer to lease is required. An offer to sell to the immediately preceding owner is required only the first time the property is sold to a third party.

(4) An offer sent by certified mail to the name and address filed by the immediately preceding owner under 25-13-904 is a good faith offer.

(5) This section does not apply to foreclosed agricultural land if such land is owned by the state pursuant to The Enabling Act (Act of February 22, 1889, Ch. 180, 25 Stat. 676). *(Terminates June 30, 1996—sec. 6, Ch. 472, L. 1987.)*

History: En. Sec. 2, Ch. 472, L. 1987.

25-13-903. *(Temporary)* **Time to exercise right.** (1) An immediately preceding owner of foreclosed agricultural land may not exercise the right to lease agricultural land later than 15 days after receiving an offer to lease under 25-13-902 and may not exercise the right to purchase agricultural land later than 60 days after receiving an offer to sell under 25-13-902.

(2) The right of the immediately preceding owner to purchase or lease any foreclosed agricultural land under 25-13-902 applies only for the same length of time that real estate may be held by a bank under 32-1-423(2). *(Terminates June 30, 1996—sec. 6, Ch. 472, L. 1987.)*

History: En. Sec. 3, Ch. 472, L. 1987.

25-13-904. *(Temporary)* **Notice required from immediately preceding owner.** (1) An immediately preceding owner must notify in writing the holder of foreclosed agricultural land of the name and current address of one individual who is authorized to exercise the right of first refusal on behalf of the immediately preceding owner. If the immediately preceding owner is an entity for which no single individual is ordinarily authorized to act, the notice shall also indicate the necessary transfer of authority that enables the individual named in the notice to act.

(2) Failure of the immediately preceding owner to file the notice required by subsection (1) within 25 days after publication of notice of foreclosure or execution sale is served or within 15 days after a change of his address operates as a waiver of the right of first refusal.

(3) A foreclosing creditor, within the definition of holder of foreclosed agricultural land, or a sheriff must advise the immediately preceding owner at the time notice of foreclosure or writ of execution is served of the right of first refusal granted in 25-13-902 and of the notice requirement of subsection (1). *(Terminates June 30, 1996—sec. 6, Ch. 472, L. 1987.)*

History: **En. Sec. 4, Ch. 472, L. 1987.**

CHAPTER 14

PROCEEDINGS IN AID OF EXECUTION

Part 1 — Proceedings to Determine Availability of Property

25-14-101. Debtor to answer concerning his property when execution unsatisfied.
25-14-102. Procedure when debtor withholding property from execution, arrest.
25-14-103. Debtors of judgment debtor and those holding his property to answer.
25-14-104. Procedure when debt to or ownership of judgment debtor denied.
25-14-105. Requiring witnesses to testify.
25-14-106. Immunity of witnesses to criminal proceedings.
25-14-107. Order to apply property to satisfaction of judgment.
25-14-108. Contempt to disobey referee's orders.

Part 2 — Appointment of a Receiver

25-14-201. Appointment of a receiver — notice.
25-14-202. Order appointing receiver to be filed.
25-14-203. Oath and undertaking.
25-14-204. When property vests in receiver.
25-14-205. Relation back of receiver's title.

Part 3 — Discharge of Imprisoned Judgment Debtor

25-14-301. Persons imprisoned to be discharged.
25-14-302. Notice of application for discharge.
25-14-303. Service of notice.
25-14-304. Hearing on application.
25-14-305. Interrogatories directed to prisoner by plaintiff.
25-14-306. Prisoner to take oath.
25-14-307. Order of discharge.
25-14-308. Reapplication for discharge.
25-14-309. Effect of discharge.
25-14-310. Judgment unaffected.
25-14-311. Discharge at instance of plaintiff.
25-14-312. Discharge upon failure of plaintiff to advance money for support of prisoner.

Part 1

Proceedings to Determine Availability of Property

Part Cross-References

Referees, Title 25, ch. 7, part 7.

Masters, Rule 53, M.R.Civ.P. (see Title 25, ch. 20).

25-14-101. Debtor to answer concerning his property when execution unsatisfied. When an execution against property of the judgment debtor or of any one of several debtors in the same judgment, issued to the sheriff of the county where he resides or, if he does not reside in this state, to the sheriff of the county where the judgment is docketed, is returned unsatisfied in whole or in part, the judgment creditor, at any time after such return is made, is entitled to an order from a judge of the court requiring such judgment debtor to appear and answer concerning his property before such judge or a referee appointed by him at a time and place specified in the order; but no judgment debtor who is a resident may be required to attend before a judge or referee out of the county in which he resides.

History: En. Sec. 215, p. 88, Bannack Stat.; re-en. Sec. 238, p. 184, L. 1867; re-en. Sec. 287, p. 90, Cod. Stat. 1871; re-en. Sec. 338, p. 133, L. 1877; re-en. Sec. 338, 1st Div. Rev. Stat. 1879; re-en. Sec. 350, 1st Div. Comp. Stat. 1887; re-en. Sec. 1260, C. Civ. Proc. 1895; re-en. Sec. 6848, Rev. C. 1907; re-en. Sec. 9454, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 714; re-en. Sec. 9454, R.C.M. 1935; R.C.M. 1947, 93-5901; amd. Sec. 108, Ch. 575, L. 1981.

Cross-References

Rules for determining residence, 1-1-215.

Return of the execution, 25-13-404.

Clerk to record returned execution when levy on real property, 25-13-405.

25-14-102. Procedure when debtor withholding property from execution, arrest. (1) After the issuing of an execution against property and upon proof, by affidavit of a party or otherwise, to the satisfaction of a judge of the court that any judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment, such judge may, by an order, require the judgment debtor to appear at a specified time and place before such judge or a referee appointed by him to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as are provided upon the return of an execution.

(2) Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor or his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the sheriff to arrest the debtor and bring him before such judge. Upon being brought before the judge, he may be ordered to enter into an undertaking with sufficient surety that he will attend from time to time before the judge or referee, as may be directed during the pendency of proceedings and until the final determination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to prison.

History: En. Sec. 216, p. 88, Bannack Stat.; en. Sec. 239, p. 184, L. 1867; re-en. Sec. 288, p. 90, Cod. Stat. 1871; re-en. Sec. 339, p. 133, L. 1877; re-en. Sec. 339, 1st Div. Rev. Stat. 1879; re-en. Sec. 351, 1st Div. Comp. Stat. 1887; re-en. Sec. 1261, C. Civ. Proc. 1895; re-en. Sec. 6849, Rev. C. 1907; re-en. Sec. 9455, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 715; re-en. Sec. 9455, R.C.M. 1935; R.C.M. 1947, 93-5902.

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.

Effect of discharge, 25-14-309.

Discharge at instance of plaintiff, 25-14-311.

Discharge upon failure of plaintiff to advance money for support of prisoner, 25-14-312.

Affidavits, Title 26, ch. 1, part 10.

25-14-103. Debtors of judgment debtor and those holding his property to answer. After the issuing or return of an execution against property of the judgment debtor or of any one of several debtors in the same judgment, or upon proof, by affidavit or otherwise, to the satisfaction of the judge that any person or corporation has property of such judgment debtor or is indebted to him in an amount exceeding $50, the judge may, by an order, require such person or corporation or any officer or member thereof to appear at a specified time and place before him or a referee appointed by him and answer concerning the same.

History: En. Sec. 218, p. 88, Bannack Stat.; re-en. Sec. 241, p. 184, L. 1867; re-en. Sec. 290, Cod. Stat. 1871; re-en. Sec. 341, p. 134, L. 1877; re-en. Sec. 341, 1st Div. Rev. Stat. 1879; re-en. Sec. 353, 1st Div. Comp. Stat. 1887; re-en. Sec. 1263, C. Civ. Proc. 1895; re-en. Sec. 6851, Rev. C. 1907; re-en. Sec. 9457, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 717; re-en. Sec. 9457, R.C.M. 1935; R.C.M. 1947, 93-5904.

Cross-References

Debts owed to judgment debtor, 25-13-502.

Property claimed by third persons, 25-13-503.

Affidavits, Title 26, ch. 1, part 10.

25-14-104. Procedure when debt to or ownership of judgment debtor denied. If it appear that a person or corporation alleged to have property of the judgment debtor or to be indebted to him claims an interest in the property adverse to him or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person or corporation for the recovery of such interest or debt; and the court or judge may, by order, forbid a transfer or other disposition of such interest or debt until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the judge granting the same or the court in which the action is brought, at any time, upon such terms as may be just.

History: En. Sec. 221, p. 89, Bannack Stat.; re-en. Sec. 244, p. 185, L. 1867; re-en. Sec. 293, Cod. Stat. 1871; re-en. Sec. 344, p. 135, L. 1877; re-en. Sec. 344, 1st Div. Rev. Stat. 1879; re-en. Sec. 356, 1st Div. Comp. Stat. 1887; re-en. Sec. 1266, C. Civ. Proc. 1895; re-en. Sec. 6854, Rev. C. 1907; re-en. Sec. 9460, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 720; re-en. Sec. 9460, R.C.M. 1935; R.C.M. 1947, 93-5907.

Cross-References

Property claimed by third persons, 25-13-503.

25-14-105. Requiring witnesses to testify. Witnesses may be required to appear and testify before the judge or referee, upon any proceeding under parts 1 and 2 of this chapter, in the same manner as upon the trial of an issue.

History: En. Sec. 219, p. 88, Bannack Stat.; re-en. Sec. 242, p. 185, L. 1867; re-en. Sec. 291, Cod. Stat. 1871; re-en. Sec. 342, p. 134, L. 1877; re-en. Sec. 342, 1st Div. Rev. Stat. 1879; re-en. Sec. 354, 1st Div. Comp. Stat. 1887; re-en. Sec. 1264, C. Civ. Proc. 1895; re-en. Sec. 6852, Rev. C. 1907; re-en. Sec. 9458, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 718; re-en. Sec. 9458, R.C.M. 1935; R.C.M. 1947, 93-5905.

Cross-References

"Testify" defined, 1-1-202.

Subpoenas and witnesses, Title 26, ch. 2.

25-14-106. Immunity of witnesses to criminal proceedings. A party or witness examined in proceedings authorized by parts 1 and 2 of this chapter is not excused from answering a question on the ground that his examination will tend to convict him of the commission of a fraud or to prove that he has been a party or privy to or knowing of a conveyance, assignment, transfer, or other disposition of property for any purpose or that he or any other person claims to be entitled, as against the judgment creditor or a receiver appointed or to be appointed in the proceedings, to hold property derived from or through the judgment debtor or to be discharged from the payment of a debt which was due to the judgment debtor or to a person in his behalf. But an answer cannot be used as evidence against the person so answering in a criminal action or criminal proceeding.

History: En. Sec. 1268, C. Civ. Proc. 1895; re-en. Sec. 6856, Rev. C. 1907; re-en. Sec. 9462, R.C.M. 1921; re-en. Sec. 9462, R.C.M. 1935; R.C.M. 1947, 93-5909.

Cross-References

Self-incrimination, Art. II, sec. 25, Mont. Const.

25-14-107. Order to apply property to satisfaction of judgment. The judge or referee may order any property of a judgment debtor, not exempt from execution, in the hands of such debtor or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment.

History: En. Sec. 220, p. 89, Bannack Stat.; re-en. Sec. 243, p. 185, L. 1867; re-en. Sec. 292, Cod. Stat. 1871; re-en. Sec. 343, p. 135, L. 1877; re-en. Sec. 343, 1st Div. Rev. Stat. 1879; re-en. Sec. 355, 1st Div. Comp. Stat. 1887; re-en Sec. 1265, C. Civ. Proc. 1895; re-en. Sec. 6853, Rev. C. 1907; re-en. Sec. 9459, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 719; re-en. Sec. 9459, R.C.M. 1935; R.C.M. 1947, 93-5906.

Cross-References

Debts owed to judgment debtor, 25-13-502.

Property claimed by third persons, 25-13-503.

Property exempt from execution, Title 25, ch. 13, part 6.

25-14-108. Contempt to disobey referee's orders. If any person, party, or witness disobey an order of the referee, properly made in the proceedings before him under parts 1 and 2 of this chapter, he may be punished by the court or judge ordering the reference for a contempt.

History: En. Sec. 222, p. 89, Bannack Stat.; re-en. Sec. 245, p. 185, L. 1867; re-en. Sec. 294, Cod. Stat. 1871; re-en. Sec. 345, p. 135, L. 1877; re-en. Sec. 345, 1st Div. Rev. Stat. 1879; re-en. Sec. 357, 1st Div. Comp. Stat. 1887; re-en. Sec. 1267, C. Civ. Proc. 1895; re-en. Sec. 6855, Rev. C. 1907; re-en. Sec. 9461, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 721; re-en. Sec. 9461, R.C.M. 1935; R.C.M. 1947, 93-5908.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Part 2

Appointment of a Receiver

Part Cross-References

Receivers, Title 27, ch. 20.

25-14-201. Appointment of a receiver — notice. At any time after making an order requiring the judgment debtor or any other person to attend and be examined, as prescribed in parts 1 and 2 of this chapter, the judge may make an order appointing a receiver of the property of the judgment debtor. At least 2 days' notice of the application for the order appointing a receiver must be given personally to the judgment debtor unless the judge is satisfied that he cannot, with reasonable diligence, be found within the state, in which case the order must recite that fact and may dispense with notice or direct notice to be given in any manner which the judge thinks proper. But where the order to attend and be examined has been served upon the judgment debtor, a receiver may be appointed upon the return day thereof or at the close of the examination without further notice to him.

History: En. Sec. 1269, C. Civ. Proc. 1895; re-en. Sec. 6857, Rev. C. 1907; re-en. Sec. 9463, R.C.M. 1921; re-en. Sec. 9463, R.C.M. 1935; R.C.M. 1947, 93-5910.

Cross-References

Service of process and other papers, Title 25, ch. 3.

Appointment procedure, Title 27, ch. 20, part 2.

25-14-202. Order appointing receiver to be filed. An order appointing a receiver must be filed in the office of the clerk of the court where the judgment is docketed or a transcript of the original docket is filed.

History: En. Sec. 1270, C. Civ. Proc. 1895; re-en. Sec. 6858, Rev. C. 1907; re-en. Sec. 9464, R.C.M. 1921; re-en. Sec. 9464, R.C.M. 1935; R.C.M. 1947, 93-5911(part); amd. Sec. 109, Ch. 575, L. 1981.

Cross-References

Duties of County Clerk and Recorder, 7-4-2611.

25-14-203. Oath and undertaking. The receiver must take and subscribe the official oath and give an undertaking, if required by the judge.

History: En. Sec. 1270, C. Civ. Proc. 1895; re-en. Sec. 6858, Rev. C. 1907; re-en. Sec. 9464, R.C.M. 1921; re-en. Sec. 9464, R.C.M. 1935; R.C.M. 1947, 93-5911(part).

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.

Oath and undertaking to faithfully discharge duties, 27-20-301.

25-14-204. When property vests in receiver. The property of the judgment debtor is vested in a receiver who has duly qualified from the time of filing the order appointing him, subject to the following exceptions:

(1) Real property is vested in the receiver only from the time when the order is filed with the clerk of the court or a certified copy thereof, as the case may be, is filed with the clerk of the county where it is situated.

(2) Where the judgment debtor, at the time when the order is filed, resides in another county of the state, his personal property is vested in the receiver only from the time when a copy of the order, certified by the clerk in whose office it is filed, is filed with the clerk of the district court of the county where he resides.

History: En. Sec. 1271, C. Civ. Proc. 1895; re-en. Sec. 6859, Rev. C. 1907; re-en. Sec. 9465, R.C.M. 1921; re-en. Sec. 9465, R.C.M. 1935; R.C.M. 1947, 93-5912.

Cross-References

Rules for determining residence, 1-1-215.

Powers of receiver, 27-20-302.

25-14-205. Relation back of receiver's title. (1) Where the receiver's title to personal property has become vested, as prescribed in 25-14-204, it also extends back by relation for the benefit of the judgment creditor in whose behalf the proceedings were instituted, as follows:

(a) Where an order requiring the judgment debtor to attend and be examined has been served before the appointment of a receiver or the judgment debtor has been brought before the judge on arrest, the receiver's title extends back so as to include the personal property of the judgment debtor at the time of the service of the order or his arrest.

(b) Where an order has not been served or no arrest, as specified in subsection (1)(a), but an order has been made requiring a person to attend and be examined concerning property belonging or a debt due to the judgment debtor, the receiver's title extends to the personal property belonging to the judgment debtor which was in the hands or under the control of the person or corporation thus required to attend at the time of the service of the order and to a debt then due him from that person or corporation.

(c) In every other case, where notice of the application for the appointment of the receiver was given to the judgment debtor, the receiver's title extends to the personal property of the judgment debtor at the time when the notice was served, either personally or by complying with the requirements of an order prescribing a substitute for personal service.

(2) Where the case is within two or more of subsections (1)(a) through (1)(c) of this section, the rule most favorable to the judgment creditor must be adopted.

(3) But this section does not affect the title of a purchaser in good faith, without notice, and for a valuable consideration or the payment of a debt in good faith and without notice.

History: En. Sec. 1272, C. Civ. Proc. 1895; re-en. Sec. 6860, Rev. C. 1907; re-en. Sec. 9466, R.C.M. 1921; re-en. Sec. 9466, R.C.M. 1935; R.C.M. 1947, 93-5913.

Cross-References

Notice — actual and constructive, 1-1-217.

Arrest and bail in civil actions, Title 27, ch. 16.

Part 3

Discharge of Imprisoned Judgment Debtor

Part Cross-References

Arrest and bail in civil actions, Title 27, ch. 16.

25-14-301. Persons imprisoned to be discharged. Any person confined in jail on an execution issued on a judgment rendered in a civil action must be discharged therefrom upon the conditions of this part specified.

History: En. Sec. 107, p. 48, Cod. Stat. 1871; re-en. Sec. 145, p. 74, L. 1877; re-en. Sec. 145, 1st Div. Rev. Stat. 1879; re-en. Sec. 147, 1st Div. Comp. Stat. 1887; re-en. Sec. 2060, C. Civ. Proc. 1895; re-en. Sec. 7257, Rev. C. 1907; re-en. Sec. 9875, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1143; re-en. Sec. 9875, R.C.M. 1935; R.C.M. 1947, 93-9601.

25-14-302. Notice of application for discharge. Such person must cause a notice in writing to be given to the plaintiff or his agent or attorney that at a certain time and place he will apply to a judge of the district court of the county in which such person may be confined for the purpose of obtaining a discharge from his imprisonment.

History: En. Sec. 108, p. 48, Cod. Stat. 1871; re-en. Sec. 146, p. 74, L. 1877; re-en. Sec. 146, 1st Div. Rev. Stat. 1879; re-en. Sec. 148, 1st Div. Comp. Stat. 1887; re-en. Sec. 2061, C. Civ. Proc.

1895; re-en. Sec. 7258, Rev. C. 1907; re-en. Sec. 9876, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1144; re-en. Sec. 9876, R.C.M. 1935; R.C.M. 1947, 93-9602.

25-14-303. Service of notice. Such notice must be served upon the plaintiff or his agent or attorney 1 day at least before the hearing of the application. If the plaintiff be not a resident of the county and have no agent or attorney in the county, no such notice will be served.

History: En. Sec. 109, p. 48, Cod. Stat. 1871; re-en. Sec. 147, p. 74, L. 1877; re-en. Sec. 147, 1st Div. Rev. Stat. 1879; re-en. Sec. 149, 1st Div. Comp. Stat. 1887; re-en. Sec. 2062, C. Civ. Proc. 1895; re-en. Sec. 7259, Rev. C. 1907; re-en. Sec. 9877, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1145; re-en. Sec. 9877, R.C.M. 1935; R.C.M. 1947, 93-9603.

Cross-References

Rules for determining residency, 1-1-215.

Service of notice, Rules 4 and 5, M.R.Civ.P. (see Title 25, ch. 20).

25-14-304. Hearing on application. At the time and place specified in the notice, such person must be taken before the judge, who must examine him under oath concerning his estate and property and effects, the disposal thereof, and his ability to pay the judgment for which he is committed; and such judge may also hear any other legal or pertinent evidence that may be produced by the debtor or the creditor.

History: En. Sec. 110, p. 48, Cod. Stat. 1871; re-en. Sec. 148, p. 74, L. 1877; re-en. Sec. 148, 1st Div. Rev. Stat. 1879; re-en. Sec. 150, 1st Div. Comp. Stat. 1887; re-en. Sec. 2063, C. Civ. Proc. 1895; re-en. Sec. 7260, Rev. C. 1907; re-en. Sec. 9878, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1146; re-en. Sec. 9878, R.C.M. 1935; R.C.M. 1947, 93-9604.

Cross-References

Relevancy and its limits, Art. IV, Montana Rules of Evidence (see Title 26, ch. 10).

25-14-305. Interrogatories directed to prisoner by plaintiff. The plaintiff in the action may, upon such examination, propose to the prisoner any such interrogatories pertinent to the inquiry; and they must, if required by the plaintiff, be proposed and answered in writing, and the answer must be signed and sworn to by the prisoner.

History: En. Sec. 2064, C. Civ. Proc. 1895; re-en. Sec. 7261, Rev. C. 1907; re-en. Sec. 9879, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1147; re-en. Sec. 9879, R.C.M. 1935; R.C.M. 1947, 93-9605; amd. Sec. 110, Ch. 575, L. 1981.

Cross-References

Interrogatories — procedures, Rule 33(a), M.R.Civ.P. (see Title 25, ch. 20).

25-14-306. Prisoner to take oath. If, upon the examination, the judge is satisfied that the prisoner is entitled to his discharge, he must administer to him the following oath: "I, ..., do solemnly swear that I have not any estate, real or personal, to the amount of $50, except such as is by law exempted from being taken in execution; and that I have not any other estate now conveyed or concealed or in any way disposed of with design to secure the same to my use or to hinder, delay, or defraud my creditors; so help me God."

History: En. Sec. 111, p. 48, Cod. Stat. 1871; re-en. Sec. 149, p. 74, L. 1877; re-en. Sec. 149, 1st Div. Rev. Stat. 1879; re-en. Sec. 151, 1st Div. Comp. Stat. 1887; re-en. Sec. 2065, C. Civ. Proc. 1895; re-en. Sec. 7262, Rev. C. 1907; re-en. Sec. 9880, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1148; re-en. Sec. 9880, R.C.M. 1935; R.C.M. 1947, 93-9606.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

25-14-307. Order of discharge. After administering the oath, the judge must issue an order that the prisoner be discharged from custody, and the officer, upon the service of such order, must discharge the prisoner forthwith if he be imprisoned for no other cause.

History: En. Sec. 112, p. 48, Cod. Stat. 1871; re-en. Sec. 150, p. 74, L. 1877; re-en. Sec. 150, 1st Div. Rev. Stat. 1879; re-en. Sec. 152, 1st Div. Comp. Stat. 1887; re-en. Sec. 2066, C. Civ. Proc. 1895; re-en. Sec. 7263, Rev. C. 1907; re-en. Sec. 9881, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1149; re-en. Sec. 9881, R.C.M. 1935; R.C.M. 1947, 93-9607.

25-14-308. Reapplication for discharge. If such judge does not discharge the prisoner, he may apply for his discharge at the end of every succeeding 10 days in the same manner as above provided, and the same proceedings must thereupon be had.

History: En. Sec. 113, p. 48, Cod. Stat. 1871; re-en. Sec. 151, p. 74, L. 1877; re-en. Sec. 151, 1st Div. Rev. Stat. 1879; re-en. Sec. 153, 1st Div. Comp. Stat. 1887; re-en. Sec. 2067, C. Civ. Proc. 1895; re-en. Sec. 7264, Rev. C. 1907; re-en. Sec. 9882, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1150; re-en. Sec. 9882, R.C.M. 1935; R.C.M. 1947, 93-9608.

25-14-309. Effect of discharge. The prisoner, after being so discharged, is forever exempt from arrest or imprisonment for the same debt unless he be convicted of having willfully sworn falsely upon his examination before the judge or in taking the oath before prescribed.

History: En. Sec. 114, p. 48, Cod. Stat. 1871; re-en. Sec. 152, p. 74, L. 1877; re-en. Sec. 152, 1st Div. Rev. Stat. 1879; re-en. Sec. 154, 1st Div. Comp. Stat. 1887; re-en. Sec. 2068, C. Civ. Proc. 1895; re-en. Sec. 7265, Rev. C. 1907; re-en. Sec. 9883, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1151; re-en. Sec. 9883, R.C.M. 1935; R.C.M. 1947, 93-9609.

Cross-References

Execution against person of judgment debtor, 25-13-308.

Procedure when debtor withholding property from execution, arrest, 25-14-102.

False swearing, 45-7-202.

25-14-310. Judgment unaffected. The judgment against any prisoner who is discharged remains in full force against any estate which may then or at any time afterward belong to him, and the plaintiff may take out a new execution against the goods and estate of the prisoner in like manner as if he had never been committed.

History: En. Sec. 2069, C. Civ. Proc. 1895; re-en. Sec. 7266, Rev. C. 1907; re-en. Sec. 9884, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1152; re-en. Sec. 9884, R.C.M. 1935; R.C.M. 1947, 93-9610.

Cross-References

Execution against person of judgment debtor, 25-13-308.

Procedure when debtor withholding property from execution, arrest, 25-14-102.

25-14-311. Discharge at instance of plaintiff. The plaintiff in the action may at any time order the prisoner to be discharged, and he is not thereafter liable to imprisonment for the same cause of action.

History: En. Sec. 115, p. 48, Cod. Stat. 1871; re-en. Sec. 153, p. 74, L. 1877; re-en. Sec. 153, 1st Div. Rev. Stat. 1879; re-en. Sec. 155, 1st Div. Comp. Stat. 1887; re-en. Sec. 2070, C. Civ. Proc. 1895; re-en. Sec. 7267, Rev. C. 1907; re-en. Sec. 9885, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1153; re-en. Sec. 9885, R.C.M. 1935; R.C.M. 1947, 93-9611.

Cross-References

Execution against person of judgment debtor, 25-13-308.

Procedure when debtor withholding property from execution, arrest, 25-14-102.

25-14-312. Discharge upon failure of plaintiff to advance money for support of prisoner. Whenever a prisoner is committed to jail on an execution issued on a judgment recovered in a civil action, the creditor or his agent or attorney must advance to the jailer, on such commitment, sufficient money for the support of the prisoner for 1 week and must make the like advance for every successive week of his imprisonment, and in case of failure to do so, the jailer must forthwith discharge such prisoner from custody, and such discharge has the same effect as if made by order of the creditor.

History: En. Sec. 2071, C. Civ. Proc. Sec. 1895; re-en. Sec. 7268, Rev. C. 1907; re-en. Sec. 9886, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1154; re-en. Sec. 9886, R.C.M. 1935; R.C.M. 1947, 93-9612.

Cross-References

Execution against person of judgment debtor, 25-13-308.

Procedure when debtor withholding property from execution, arrest, 25-14-102.

CHAPTER 15

LIABILITY OF JOINT DEBTORS

Part 1 — Applying Judgment to Joint Debtor

25-15-101. Summoning joint debtor not originally served.
25-15-102. Content and service of summons.
25-15-103. Affidavit to accompany summons — new complaint unnecessary.
25-15-104. Answer — time for filing, contents.
25-15-105. What constitute the pleadings.
25-15-106. Trial of issues — limit on verdict.

Part 2 — Discharge of Joint Debtor

25-15-201. Discharge of one joint debtor.
25-15-202. Effect of discharge — right of contribution.

Chapter Cross-References

Execution when only some of defendants served, 25-15-101.

Multiple defendants jointly and severally liable, 27-1-703.

Part 1

Applying Judgment to Joint Debtor

25-15-101. Summoning joint debtor not originally served. When a judgment is recovered against one or more of several persons, jointly indebted upon an obligation, by proceeding as provided in Rule 4D(10), M.R.Civ.P., those who were not originally served with the summons and did not appear to the action may be summoned to show cause why they should not be bound by the judgment in the same manner as though they had been originally served with the summons.

History: En. Sec. 291, p. 104, Bannack Stat.; re-en. Sec. 346, p. 205, L. 1867; re-en. Sec. 420, p. 119, Cod. Stat. 1871; re-en. Sec. 446, p. 161, L. 1877; re-en. Sec. 446, 1st Div. Rev. Stat. 1879; re-en. Sec. 459, 1st Div. Comp. Stat. 1887; re-en. Sec. 1780, C. Civ. Proc. 1895; re-en. Sec. 7129, Rev. C. 1907; re-en. Sec. 9762, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 989; re-en. Sec. 9762, R.C.M. 1935; R.C.M. 1947, 93-8101.

Cross-References

Execution when only some of defendants served, 25-13-303.

25-15-102. Content and service of summons. The summons, as provided in 25-15-101, must describe the judgment and require the person summoned to show cause why he should not be bound by it and must be served in the same manner and returnable within the same time as the original summons.

History: En. Sec. 292, p. 104, Bannack Stat.; re-en. Sec. 347, p. 205, L. 1867; re-en. Sec. 421, p. 119, Cod. Stat. 1871; re-en. Sec. 447, p. 161, L. 1877; re-en. Sec. 447, 1st Div. Rev. Stat. 1879; re-en. Sec. 460, 1st Div. Comp. Stat. 1887; re-en. Sec. 1781, C. Civ. Proc. 1895; re-en. Sec. 7130, Rev. C. 1907; re-en. Sec. 9763, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 990; re-en. Sec. 9763, R.C.M. 1935; R.C.M. 1947, 93-8102(part).

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

25-15-103. Affidavit to accompany summons — new complaint unnecessary. The summons must be accompanied by an affidavit of the plaintiff or his agent, representative, or attorney that the judgment or some part thereof remains unsatisfied and must specify the amount due thereon. It is not necessary to file a new complaint.

History: Ap. p. Sec. 293, p. 104, Bannack Stat.; re-en. Sec. 348, p. 205, L. 1867; re-en. Sec. 422, p. 119, Cod. Stat. 1871; re-en. Sec. 448, p. 161, L. 1877; re-en. Sec. 448, 1st Div. Rev. Stat. 1879; re-en. Sec. 461, 1st Div. Comp. Stat. 1887; re-en. Sec. 1782, C. Civ. Proc. 1895; re-en. Sec. 7131, Rev. C. 1907; re-en. Sec. 9764, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 991; re-en. Sec. 9764, R.C.M. 1935; Sec. 93-8103, R.C.M. 1947; Ap. p. Sec. 292, p. 104, Bannack Stat.; re-en. Sec. 347, p. 205, L. 1867; re-en. Sec. 421, p. 119, Cod. Stat. 1871; re-en. Sec. 447, p. 161, L. 1877; re-en. Sec. 447, 1st Div. Rev. Stat. 1879; re-en. Sec. 460, 1st Div. Comp. Stat. 1887; re-en. Sec. 1781, C. Civ. Proc. 1895; re-en. Sec. 7130, Rev. C. 1907; re-en. Sec. 9763, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 990; re-en. Sec. 9763, R.C.M. 1935; Sec. 93-8102, R.C.M. 1947; R.C.M. 1947, 93-8102(part), 93-8103.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

25-15-104. Answer — time for filing, contents. Upon such summons, the defendant may answer within the time specified therein, denying the judgment or setting up any defense which may have arisen subsequently; or he may deny his liability on the obligation upon which the judgment was recovered, except a discharge from such liability by the statute of limitations.

History: En. Sec. 294, p. 105, Bannack Stat.; re-en. Sec. 349, p. 205, L. 1867; re-en. Sec. 423, p. 119, Cod. Stat. 1871; re-en. Sec. 449, p. 161, L. 1877; re-en. Sec. 449, 1st Div. Rev. Stat. 1879; re-en. Sec. 462, 1st Div. Comp. Stat. 1887; re-en. Sec. 1783, C. Civ. Proc. 1895; re-en. Sec. 7132, Rev. C. 1907; re-en. Sec. 9765, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 992; re-en. Sec. 9765, R.C.M. 1935; R.C.M. 1947, 93-8104.

Cross-References

Statutes of Limitations, Title 27, ch. 2.

25-15-105. What constitute the pleadings. If the defendant in his answer deny the judgment or set up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer constitute the written allegations in the case; if he deny his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit annexed, and the answer constitute such written allegations.

History: En. Sec. 295, p. 105, Bannack Stat.; re-en. Sec. 350, p. 205, L. 1867; re-en. Sec. 424, p. 119, Cod. Stat. 1871; re-en. Sec. 450, p. 161, L. 1877; re-en. Sec. 450, 1st Div. Rev. Stat. 1879; re-en. Sec. 463, 1st Div. Comp. Stat. 1887; re-en. Sec. 1784, C. Civ. Proc. 1895; re-en. Sec. 7133, Rev. C. 1907; re-en. Sec. 9766, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 993; re-en. Sec. 9766, R.C.M. 1935; R.C.M. 1947, 93-8105.

25-15-106. Trial of issues — limit on verdict. The issues formed may be tried as in other cases; but when the defendant denies in his answer any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it must be for not exceeding the amount remaining unsatisfied on such original judgment, with interest thereon.

History: En. Sec. 296, p. 105, Bannack Stat.; re-en. Sec. 351, p. 205, L. 1867; re-en. Sec. 425, p. 119, Cod. Stat. 1871; re-en. Sec. 451, p. 161, L. 1877; re-en. Sec. 451, 1st Div. Rev. Stat. 1879; re-en. Sec. 464, 1st Div. Comp. Stat. 1887; re-en. Sec. 1785, C. Civ. Proc. 1895; re-en. Sec. 7134, Rev. C. 1907; re-en. Sec. 9767, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 994; re-en. Sec. 9767, R.C.M. 1935; R.C.M. 1947, 93-8106.

Cross-References

Trials, Title 25, ch. 7.

Amount of interest, 25-9-205.

Part 2

Discharge of Joint Debtor

25-15-201. Discharge of one joint debtor. Any joint debtor, including a partner, may compromise with a creditor, and a discharge to him by such creditor is as effectual as if made to all debtors, but such discharge does not relieve the other joint debtors. Any creditor can release a judgment in his favor against any one or more joint debtors, and such release does not discharge the others.

History: En. Sec. 1786, C. Civ. Proc. 1895; re-en. Sec. 7135, Rev. C. 1907; re-en. Sec. 9768, R.C.M. 1921; re-en. Sec. 9768, R.C.M. 1935; R.C.M. 1947, 93-8107.

25-15-202. Effect of discharge — right of contribution. Except as provided in 27-1-703, the discharge of a joint debtor operates as a payment to the creditor equal to the proportionate interest of the debtor discharged, but the discharge of such debtor does not prevent his codebtors from enforcing the right of contribution in case they are compelled to pay the whole of the debt.

History: En. Sec. 1787, C. Civ. Proc. 1895; re-en. Sec. 7136, Rev. C. 1907; re-en. Sec. 9769, R.C.M. 1921; re-en. Sec. 9769, R.C.M. 1935; R.C.M. 1947, 93-8108; amd. Sec. 1, Ch. 253, L. 1987.

Compiler's Comments

1987 Amendment: At beginning inserted exception clause and made minor change in phraseology.

Cross-References

Compelling contribution or repayment — joint debtor, surety, 25-13-104.

Multiple defendants jointly and severally liable — right of contribution, 27-1-703.

Right to contribution from joint debtor, 28-1-303.

CHAPTERS 16 THROUGH 18

RESERVED

CHAPTER 19

UNIFORM DISTRICT COURT RULES

Rule
1. Form of papers presented for filing.
2. Motions.
3. Ex parte matters.

4. Filing of discovery.
5. Pre-trial order and pre-trial conference.
6. Briefs.
7. Jury instructions and verdict forms.
8. Findings and conclusions.
9. Juror questionnaire.
10. Death or removal of attorney.
11. Judgments and decrees.
12. Exhibits.
13. Regulation of attorneys not admitted to practice in Montana.
14. Local rules allowed.

Rule 1. *(Temporary)* **Form of papers presented for filing.**

(a) Papers defined. The word "papers" as used in this rule includes all documents and copies except exhibits and records on appeal from lower courts.

(b) Pagination, printing, etc. All papers shall be:

(1) typewritten, printed, or equivalent;
(2) clear and permanent;
(3) equally legible to printing;
(4) of type not smaller than pica;
(5) on standard quality opaque, unglazed white paper;
(6) printed one side only;
(7) lines unnumbered or numbered consecutively from the top;
(8) spaced one and one-half or double;
(9) page numbered consecutively at the bottom; and
(10) bound firmly at the top.

Matters such as property descriptions or direct quotes may be single spaced.

Extraneous documents not in the above format and not readily conformable may be filed in their original form and length.

(c) Format. The first page of all papers shall conform to the following:

(1) Commencing at line 1 at the left margin, single spaced, shall be the name of the attorney or party responsible for the pleadings, together with telephone number and the complete mailing address for service of papers.

(2) Lines 1 through 7 of the right one-half of the page shall be left blank for the use of the clerk.

(3) On or below line 8, the title of the court.

(4) Commencing at line 9 or below on the left, the title of the case.

(5) On the right and opposite the title of the case, the case number and identification of the document being filed.

(6) Nonconforming papers may not be filed without leave of the court.

(d) Changes, conformance of copies. Additions, deletions, or interlineations shall be initialed by the clerk or judge at the time of filing. All copies served shall conform to the original as filed.

Rule 1. *(Effective January 1, 1989)* **Form of papers presented for filing.**

(a) Papers defined. The word "papers" as used in this rule includes all documents and copies except exhibits and records on appeal from lower courts.

(b) pagination, printing, etc. All papers shall be:
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(2) clear and permanent;
(3) equally legible to printing;
(4) of type not smaller than pica;
(5) on standard quality opaque, unglazed white paper, 8 ½" X 11" in size;
(6) printed one side only;
(7) lines unnumbered or numbered consecutively from the top;
(8) spaced one and one-half or double;
(9) page numbered consecutively at the bottom; and
(10) bound firmly at the top.

Matters such as property descriptions or direct quotes may be single spaced.

Extraneous documents not in the above format and not readily conformable may be filed in their original form and length.

(c) Format. The first page of all papers shall conform to the following:

(1) Commencing at line 1 at the left margin, single spaced, shall be the name of the attorney or party responsible for the pleadings, together with telephone number and the complete mailing address for service of papers.

(2) Lines 1 through 7 of the right one-half of the page shall be left blank for the use of the clerk.

(3) On or below line 8, the title of the court.

(4) Commencing at line 9 or below on the left, the title of the case.

(5) On the right and opposite the title of the case, the case number and identification of the document being filed.

(6) Nonconforming papers may not be filed without leave of the court.

(d) Changes, conformance of copies. Additions, deletions, or interlineations shall be initialed by the clerk or judge at the time of filing. All copies served shall conform to the original as filed.

History: **En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.**

Rule 2. Motions.

(a) Upon filing a motion or within five days thereafter, the moving party shall file a brief. The brief may be accompanied by appropriate supporting documents. Within ten days thereafter the adverse party shall file an answer brief which also may be accompanied by appropriate supporting documents. Within ten days thereafter, movant may file a reply brief or other appropriate responsive documents.

(b) Failure to file briefs. Failure to file briefs may subject the motion to summary ruling. Failure to file a brief within five days by the moving party shall be deemed an admission that the motion is without merit. Failure to file an answer brief by the adverse party within ten days shall be deemed an admission that the motion is well taken. Reply briefs by movant are optional, and failure to file will not subject a motion to summary ruling.

(c) Oral argument. The court may order oral argument sua sponte or upon application of a party.

(d) When motion deemed submitted. Unless oral argument is ordered or unless the time is enlarged by the court, the motion is deemed submitted at the expiration of any of the applicable time limits set forth above without supporting briefs having been filed.

If oral argument is ordered, the motion will be deemed submitted at the close of argument unless the court orders additional briefs, in which case the motion will be deemed submitted as of the date designated as the time for filing the final brief.

(e) In the event of conflict, the Montana Rules of Civil Procedure shall control. Time computation shall be governed by Rule 6(a), M.R.Civ.P.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 3. Ex parte matters.

(a) Extensions of time to further plead, file briefs, continue a hearing on a motion and other permissible ex parte matters, may be granted by order of the court upon written application.

(b) Prior to the issuance of an ex parte order, the attorney seeking such order must file a written certification with the court declaring that opposing counsel has been contacted and given reasonable notice of:

(A) the time and place of the ex parte conference or meeting;
(B) the substance of the order sought;
(C) whether counsel opposes the motion.

(c) All requests for extension of time or continuance or other ex parte matters shall be accompanied by an appropriate form or order, with sufficient copies for the clerk to mail to adverse parties.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 4. Filing of discovery.

(a) Depositions upon oral or written examinations, interrogatories and answers thereto, requests for production of documents and responses thereto, requests for admissions and responses thereto, shall not be routinely filed. When any motion is filed making reference to discovery, the party filing the motion shall submit with the motion relevant unfiled documents.

(b) The pre-trial order shall identify all those portions of depositions, interrogatories, requests for admissions, and answers and responses thereto that the parties intend to introduce into evidence.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 5. Pre-trial order and pre-trial conference.

(a) Pre-trial. Unless otherwise ordered by the court, a pre-trial conference shall be held in all contested civil cases.

(b) Not later than five days prior to the pre-trial conference, plaintiff's counsel shall convene a conference of all counsel for the purpose of preparing a pre-trial order. The proposed pre-trial order shall be presented for signature at the pre-trial conference. In the event of a dispute as to the contents of the order, such dispute shall be presented to the judge for resolution at the pre-trial conference.

(c) Pre-trial order. The pre-trial order shall be substantially in the following form:

(TITLE OF COURT AND CAUSE)

Pursuant to Rule 16 of the Montana Rules of Civil Procedure, a pre-trial conference was held in the above-entitled cause on the ..... day of ....., 19.., at ..... o'clock ...m.

....represented the plaintiff(s).
....represented the defendant(s).
....
....(other appearances) were also present.

AGREED FACTS

The following facts are admitted, agreed to be true, and require no proof: (Here enumerate all agreed facts, including facts admitted in the pleadings.)

PLAINTIFF'S CONTENTIONS

Plaintiff's contentions are as follows:
1.
2.

DEFENDANT'S CONTENTIONS

1.
2.

EXHIBITS

Attached to the pre-trial order are exhibit lists identifying by number and brief description each exhibit and stating any objections to the exhibits. Any exhibit offered at the trial to which no objection was made in the pre-trial order will be admitted into evidence.

WITNESSES

The following witnesses and no others will (may) be called to testify except on rebuttal:

Plaintiff
1.
2.
Defendant
1.
2.

ISSUES OF FACT

The following issues of fact, and no others, remain to be litigated upon the trial: (Here specify each issue.)
1.
2.

ISSUES OF LAW

The following issues of law, and no others, remain to be litigated upon the trial: (Here set forth a concise statement of each.)
1.
2.

DISCOVERY

The final pre-trial order shall refer to all those portions of depositions upon oral examination and interrogatories, requests for admissions, and answers and responses that the parties intend to introduce into evidence. Any objections to the use of the above documents shall be stated, and if not stated, shall be deemed waived. (Because this rule relates to filing and is designed to consolidate in one place all of the fruits of discovery and because there can be no surprise element involved, the court shall be liberal in permitting the amendment of the pre-trial order to include any material not originally listed.)

ADDITIONAL PRE-TRIAL DISCOVERY

(Here specify any additional discovery contemplated by either party and the time within which such discovery will be completed.)

STIPULATIONS

(Here include any stipulations in addition to the agreed facts set forth above.)

DETERMINATION OF LEGAL QUESTIONS IN ADVANCE OF TRIAL

It was agreed that the following legal issues should be determined by the court in advance of the trial.

(Here specify issues and make provision for filing briefs with respect to such issues.)

ADDITIONAL ISSUES

Additional issues to be determined and/or addressed include:
order of proof where there is a counterclaim;
attorney's fees testimony and/or proof;
time of filing and service of trial briefs and other issues.

JURY SELECTION AND PROCESS

Order and method of selection, stipulation that jury will be selected or drawn, numbering of panel, number of challenges, time to file instructions, length of time on voir dire.

TRIAL

It is estimated that the case will require ..... hours/days for trial.

The case will be tried before the court with (without) a jury.

IT IS HEREBY ORDERED that this pre-trial order shall supersede the pleadings and govern the course of the trial of this cause, unless modified to prevent manifest injustice.

IT IS HEREBY ORDERED that all pleadings herein shall be amended to conform to this pre-trial order.

DATED this ..... day of ...., 19...

....
District Judge

Approved as to form and content.

....
Attorney for Plaintiff

....
Attorney for Defendant

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 6. Briefs.

All briefs presented to the court at any time will be filed with the court and must forthwith be served on all opposing counsel.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 7. Jury instructions and verdict forms.

(a) Submission. All proposed jury instructions and verdict forms must be delivered to the court in duplicate and a copy served upon all opposing parties at the time fixed in the pre-trial order. Thereafter, additional instructions may be allowed to prevent manifest injustice.

(b) Citation of authorities. Each proposed instruction shall contain at the bottom the source thereof and a citation of authorities, if any, supporting the statement of law therein.

(c) Form. Each instruction shall be on 8 ½" X 11" paper and shall, after the citation of authorities, indicate the party on whose behalf it is requested and be numbered consecutively. One copy of the instructions filed with the court shall not be firmly bound together.

(d) Request for special findings by jury. Whenever a party desires special findings by a jury he shall file with the court and serve a copy upon all opposing parties, in writing, the issues or questions of fact upon which such findings are requested, in proper form for submission to the jury.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 8. Findings and conclusions.

In all matters where the court must enter findings of fact and conclusions of law pursuant to Rule 52, M.R.Civ.P., all parties shall file with the court and serve upon opposing counsel, at least five days prior to the scheduled trial or hearing, proposed findings of fact and conclusions of law. Failure to file proposed findings of fact and conclusions of law in a timely manner shall be cause for appropriate sanction, including removal of the case from the trial calendar, dismissal or granting of a judgment, precluding the offending party from presentation of evidence or objecting to evidence submitted by the other party, or such other action as the court deems appropriate. Post-trial amended and supplemental findings of fact and conclusions of law may be submitted in appropriate circumstances and only upon order of the court.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 9. Juror questionnaire.

All jurors are requested to complete a questionnaire, the form of which is on file with the clerk in his general order file and which contains basic vital statistics and other pertinent information. The completed questionnaires will be available for examination or copying by counsel in the clerk's office in advance of trial and should be used so as to expedite the examination of jurors. The attorneys shall not unduly reiterate the information contained in the questionnaires during their voir dire examination.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 10. Death or removal of attorney.

(a) Whenever an attorney representing a party to an action or in another civil proceeding of any kind is removed, withdraws, or ceases to act as such, said attorney must inform the court and all other parties of the full name and address of his client and any other information which the court may find appropriate to assist in contacting said party.

(b) When the attorney representing a party to an action or proceeding dies, is removed, withdraws, or ceases to act as such, that party, before any further proceedings are had against him must be given notice by any adverse party:

(1) that such party must appoint another attorney or appear in person;

(2) the date of the trial or of the next hearing or action required in the case; and

(3) that if he fails to appoint an attorney or appear in person by a date certain, which may not be less than twenty days from the date of the notice, the action or other proceeding will proceed and may result in a judgment or other order being entered against him, by default or otherwise.

(c) Such notice may be by personal service or by certified mail to said party's last-known address.

(d) If said party does not appoint another attorney or appear in person within twenty days of the service or mailing of said notice, the action may proceed to judgment. However, copies of all papers and documents required to be served by these rules and the Rules of Civil Procedure shall be mailed to said party at his last-known address.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 11. Judgments and decrees.

Whenever a judgment or decree is signed by the presiding judge, it shall be delivered to the clerk and immediately filed in the records of the court, and the fee required by law shall be forthwith paid to the clerk. Failure of counsel to observe this rule shall be deemed a contempt of court.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 12. Exhibits.

(a) Every exhibit placed on file or offered in evidence shall be held in the custody of the clerk. Unless there be good reason why the original of an exhibit should be retained, upon application, the court may order a copy filed in its place. Public records offered in evidence may be withdrawn at the conclusion of the hearing on order of the court.

(b) Exhibits may be withdrawn by the party offering them thirty days after a judgment has become final. Forty-five days after a judgment has become final, the clerk may apply to the court for an order to dispose of exhibits and shall notify counsel of record of said application. Twenty days after mailing of said notice, the court may enter its order authorizing the clerk to dispose of exhibits.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 13. Regulation of attorneys not admitted to practice in Montana.

An attorney seeking to be admitted to practice before this court on a particular case who is not admitted to the Bar of Montana and who is authorized to practice law in the highest courts of another state must, at the time of his/her first appearance in a district court in Montana or within ten days thereafter and before any further proceedings are had in the matter, join with, of record, an attorney who is admitted to practice in Montana and who is a resident of Montana.

In order to help secure the just, speedy, and inexpensive determination of every action, such local counsel must be furnished with all factual, evidentiary, and legal information necessary to act on behalf of the party and must also be vested with full and complete authority to act on behalf of and bind the party in all matters connected with the litigation.

A failure of local counsel to take any action required by the Rules of Civil Procedure or these rules by lack of authority shall, for the purpose of imposing sanctions, be treated as a refusal to act.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

Rule 14. Local rules allowed.

Nothing in these rules shall be construed as limiting the power of the district courts from promulgating rules that do not conflict with these rules.

History: En. Sup. Ct. Ord. May 29, 1987, eff. June 1, 1987.

CHAPTER 20

RULES OF CIVIL PROCEDURE

I. Scope of Rules — One Form of Action

Rule

1. Scope of rules.
2. One form of action.

II. Commencement of Action — Service of Process, Pleadings, Motions, and Orders

3. Commencement of action.
4. Persons subject to jurisdiction — process — service.
    A. Definition of person.
    B. Jurisdiction of persons.
        (1) Subject to jurisdiction.
        (2) Acquisition of jurisdiction.
    C. Process.
        (1) Summons — issuance.
        (2) Summons — form.
    D. Service.
        (1) By whom served.
        (2) Personal service within the state.
        (3) Personal service outside the state.
        (4) Other service.
        (5) Service by publication — when permitted — effect — manner — proof.
            (a) When permitted.
            (b) Effect of service by publication.
            (c) Filing of pleading and affidavit for service by publication; and order for publication.
            (d) Number of publications.
            (e) Mailing summons and complaint.
            (f) Time when first publication or service outside state must be made.
            (g) When service by publication or outside state complete.
            (h) Additional information to be published.
        (6) (a) Service on secretary of state.
            (b) Continuance to allow defense.
        (7) Amendment.

    - (8) Proof of service.
    - (9) Contents of affidavit of service.
    - (10) Procedure where only part of defendants are served.

5. Service and filing of pleadings and other papers.
    - (a) Service — when required.
    - (b) Service — how made.
    - (c) Service — numerous defendants.
    - (d) Filing.
    - (e) Filing with the court defined.
    - (f) Proof of service.
6. Time.
    - (a) Computation.
    - (b) Enlargement.
    - (c) Unaffected by expiration of term.
    - (d) For motions — affidavits.
    - (e) Additional time after service by mail.

III. Pleadings and Motions

7. Pleadings allowed — form of motions.
    - (a) Pleadings.
    - (b) Motions and other papers.
    - (c) Demurrers, pleas, etc., abolished.
8. General rules of pleading.
    - (a) Claims for relief.
    - (b) Defenses — form of denials.
    - (c) Affirmative defenses.
    - (d) Effect of failure to deny.
    - (e) Pleading to be concise and direct — consistency.
    - (f) Construction of pleadings.
9. Pleading special matters.
    - (a) Capacity.
    - (b) Fraud, mistake, condition of the mind.
    - (c) Conditions precedent.
    - (d) Official document, act, ordinance or statute.
    - (e) Judgment.
    - (f) Time and place.
    - (g) Special damage.
10. Form of pleadings.
    - (a) Caption — names of parties.
    - (b) Paragraphs — separate statements.
    - (c) Adoption by reference — exhibits.
11. Signing of pleadings, motions, and other papers — sanctions.
12. Defenses and objections — when and how presented — by pleading or motion — motion for judgment on pleadings.
    - (a) When presented.
    - (b) How presented.
    - (c) Motion for judgment on the pleadings.
    - (d) Preliminary hearings.
    - (e) Motion for more definite statement.
    - (f) Motion to strike.
    - (g) Consolidation of defenses in motion.
    - (h) Waiver or preservation of certain defenses.
13. Counterclaim and cross-claim.
    - (a) Compulsory counterclaims.
    - (b) Permissive counterclaims.
    - (c) Counterclaim exceeding opposing claim.
    - (d) Counterclaim against the state.
    - (e) Counterclaim maturing or acquired after pleading.
    - (f) Omitted counterclaim.
    - (g) Cross-claim against coparty.
    - (h) Joinder of additional parties.
    - (i) Separate trials — separate judgment.

14. Third-party practice.
    - (a) When defendant may bring in third party.
    - (b) When plaintiff may bring in third party.
15. Amended and supplemental pleadings.
    - (a) Amendments.
    - (b) Amendments to conform to the evidence.
    - (c) Relation back of amendments.
    - (d) Supplemental pleadings.
16. Pretrial conferences — scheduling — management.
    - (a) Pretrial conferences — objectives.
    - (b) Scheduling and planning.
    - (c) Subjects to be discussed at pretrial conferences.
    - (d) Final pretrial conference.
    - (e) Pretrial orders.
    - (f) Sanctions.

IV. Parties

17. Parties plaintiff and defendant — capacity.
    - (a) Real party in interest.
    - (b) Capacity to sue or be sued.
    - (c) Infants or incompetent persons.
18. Joinder of claims and remedies.
    - (a) Joinder of claims.
    - (b) Joinder of remedies — fraudulent conveyances.
19. Joinder of persons needed for just adjudication.
    - (a) Persons to be joined if feasible.
    - (b) Determination by court of whenever joinder not feasible.
    - (c) Pleading reasons for nonjoinder.
    - (d) Exception of class actions.
20. Permissive joinder of parties.
    - (a) Permissive joinder.
    - (b) Separate trials.
21. Misjoinder and nonjoinder of parties.
22. Interpleader.
    - (a) By joinder, cross-claim or counterclaim.
    - (b) By substitution.
23. Class actions.
    - (a) Prerequisites to a class action.
    - (b) Class actions maintainable.
    - (c) Determination by order whether class action to be maintained — notice — judgment — actions conducted partially as class actions.
    - (d) Order in conduct of actions.
    - (e) Dismissal or compromise.
    - (f) Security for costs.

23.1 Derivative actions by shareholders.

23.2 Actions relating to unincorporated associations.

24. Intervention.
    - (a) Intervention of right.
    - (b) Permissive intervention.
    - (c) Procedure.
25. Substitution of parties.
    - (a) Death.
    - (b) Incompetency.
    - (c) Transfer of interest.
    - (d) Public officers — death or separation from office.

V. Depositions and Discovery

26. General provisions governing discovery.
    - (a) Discovery methods.
    - (b) Discovery scope and limits.
    - (c) Protective orders.

    (d) Sequence and timing of discovery.
    (e) Supplementation of responses.
    (f) Discovery conference.
    (g) Signing of discovery requests, responses, and objections.
27. Depositions before action or pending appeal.
    (a) Before action.
    (b) Pending appeal.
    (c) Perpetuation by petition.
28. Persons before whom depositions may be taken.
    (a) Within the United States.
    (b) In foreign countries.
    (c) Disqualification for interest.
    (d) Depositions to be used in other states.
    (e) Deposition to be taken in sister states and foreign countries for use in this state.
29. Stipulations regarding discovery procedure.
30. Depositions upon oral examination.
    (a) When depositions may be taken.
    (b) Notice of examination; general requirements — special notice — nonstenographic recording — production of documents and things — deposition of organization — deposition by telephone.
    (c) Examination and cross-examination — record of examination — oath — objections.
    (d) Motion to terminate or limit examination.
    (e) Submission to witness — changes — signing.
    (f) Certification and filing by officer — exhibits — copies — notice of filing.
    (g) Failure to attend or to serve subpoena — expenses.
    (h) Audio-visual and tape recorded depositions.
31. Depositions upon written questions.
    (a) Serving questions — notice.
    (b) Officer to take responses and prepare record.
    (c) Notice of filing.
32. Use of depositions in court proceedings.
    (a) Use of depositions.
    (b) Objections to admissibility.
    (c) Deleted.
    (d) Effect of errors and irregularities in depositions.
33. Interrogatories to parties.
    (a) Availability — procedures for use.
    (b) Scope — use at trial.
    (c) Option to produce business records.
34. Production of documents and things and entry upon land for inspection and other purposes.
    (a) Scope.
    (b) Procedure.
    (c) Persons not parties.
35. Physical and mental examination of persons.
    (a) Order for examination.
    (b) Report of examining physician.
36. Requests for admissions.
    (a) Request for admission.
    (b) Effect of admission.
37. Failure to make discovery: sanctions.
    (a) Motion for order compelling discovery.
    (b) Failure to comply with order.
    (c) Expenses on failure to admit.
    (d) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection.
    (g) Failure to participate in the framing of a discovery plan.

VI. Trials

38. Jury trial of right.
    (a) Right reserved.
    (b) Demand.
    (c) [Demand] — specification of issues.

    (d) Waiver.
39. Trial by jury or by the court.
    (a) By jury.
    (b) By the court.
    (c) Advisory jury and trial by consent.
40. Assignment of cases for trial.
41. Dismissal of actions.
    (a) Voluntary dismissal — effect thereof.
        (1) By plaintiff — by stipulation.
        (2) By order of court.
    (b) Involuntary dismissal — effect thereof.
    (c) Dismissal of counterclaim, cross-claim, or third-party claim.
    (d) Costs of previously-dismissed action.
    (e) Failure to serve summons.
42. Consolidation — separate trials.
    (a) Consolidation.
    (b) Separate trials.
43. Evidence.
    (b) Deleted.
    (c) Deleted.
    (d) Affirmation in lieu of oath.
    (e) Evidence on motions.
    (f) Interpreters.
44. Proof of official record.
    (a) Authentication.
    (b) Lack of record.
    (c) Other proof.
44.1 Determination of foreign law.
45. Subpoena.
    (a) For attendance of witnesses — form — issuance.
    (b) For production of documentary evidence.
    (c) Service.
    (d) Subpoena for taking depositions — place of examinations.
    (e) Subpoena for a hearing or trial.
    (f) Contempt.
46. Exceptions unnecessary.
47. Jurors.
    (a) Examination of jurors.
    (b) Manner of selection and order of examination of jurors.
    (c) Alternate jurors.
48. Juries — verdict.
49. Special verdicts and interrogatories.
    (a) Special verdicts.
    (b) General verdict accompanied by answer to interrogatories.
50. Motion for a directed verdict and for judgment notwithstanding the verdict.
    (a) Motion for directed verdict — when made, effect.
    (b) Motion for judgment notwithstanding the verdict.
    (c) Motion for judgment notwithstanding the verdict — conditional rulings on grant of motion.
    (d) Motion for judgment notwithstanding the verdict — denial of motion.
51. Instructions to jury — objection.
52. Findings by the court.
    (a) Effect.
    (b) Amendment.
    (c) Time for determining motions.
53. Masters.
    (a) Appointment and compensation.
    (b) Reference.
    (c) Powers.
    (d) Proceedings.
        (1) Meetings.
        (2) Witnesses.
        (3) Statement of accounts.

  - (e) Report.

VII. Judgment

54. Judgments — costs.
  - (a) Definition — form.
  - (b) Judgment upon multiple claims or involving multiple parties.
  - (c) Demand for judgment.
  - (d) Costs.

55. Default.
  - (a) Entry.
  - (b) Judgment.
  - (c) Default — setting aside — extension of time by court or stipulation of parties.
  - (d) Plaintiffs, counterclaimants, cross-claimants.

56. Summary judgment.
  - (a) For claimant.
  - (b) For defending party.
  - (c) Motion and proceedings thereon.
  - (d) Case not fully adjudicated on motion.
  - (e) Form of affidavits — further testimony — defense required.
  - (f) When affidavits are unavailable.
  - (g) Affidavits made in bad faith.

57. Declaratory judgments.
58. Entry of judgment.
59. New trials — amendment of judgment.
  - (a) Grounds.
  - (b) Time for motion.
  - (c) Time for serving affidavits.
  - (d) Time for ruling on motion.
  - (e) On initiative of court.
  - (f) Order granting new trial.
  - (g) Motion to alter or amend a judgment.

60. Relief from judgment or order.
  - (a) Clerical mistakes.
  - (b) Mistakes — inadvertence — excusable neglect — newly discovered evidence — fraud, etc.
  - (c) Time for determining motions.

61. Harmless error.
62. Stay of proceedings to enforce a judgment.
  - (a) Superseded. M.R.App.P., Rule 7.
  - (b) Stay on motion for new trial or for judgment.
  - (c) Injunction pending appeal.
  - (d) Superseded. M.R.App.P., Rule 7.
  - (e) Stay in favor of the state of Montana or agency thereof.
  - (g) Power of appellate court not limited.
  - (h) Stay of judgment upon multiple claims.

VIII. Provisional and Final Remedies and Special Proceedings

64. Seizure of person or property.
65. Injunctions.
66. Receivers.
67. Deposit in court.
68. Offer of judgment.
69. Execution.
70. Judgment for specific acts — vesting title.
71. Process in behalf of and against persons not parties.

IX. Appeals

72. Appeal from a district court to the supreme court.

X. District Courts and Clerks

77. District courts and clerks.
    (a) District courts always open.
    (b) Trials and hearings — orders in chambers.
    (c) Clerk's office and orders by clerk.
    (d) Notice of entry of judgment served.
    (e) Transmittal of file on removal.
80. Stenographer — stenographic report or transcript as evidence.

XI. General Provisions

81. Applicability in general.
    (a) Special statutory proceedings.
    (b) Appeals to district courts.
    (c) Rules incorporated into statutes.
82. Jurisdiction and venue unaffected.
83. Rules by district courts.
84. Forms.
85. Title.
86. Effective date — statutes superseded.
    (a) Effective date and application to pending proceedings.
    (b) Statutes superseded.

Appendix of Forms

Form
1. Summons — official form in the district court of the .... judicial district of the state of Montana, in and for the county of .....
2. Complaint on a promissory note.
3. Complaint on an account.
4. Complaint for goods sold and delivered.
5. Complaint for money lent.
6. Complaint for money paid by mistake.
7. Complaint for money had and received.
8. Complaint for negligence.
9. Complaint for negligence where plaintiff is unable to determine definitely whether the person responsible is C.D. or E.F. or whether both are responsible and where his evidence may justify a finding of willfulness or of recklessness or of negligence.
10. Complaint for conversion.
11. Complaint for specific performance of contract to convey land.
12. Complaint on claim for debt and to set aside fraudulent conveyance under Rule 18(b).
13. Complaint for negligence under Federal Employers' Liability Act (45 U.S.C.A., 51-58).
14. Complaint for interpleader and declaratory relief.
15. Motion to dismiss.
16. Answer presenting defenses under Rule 12(b).
17. Answer to complaint set forth in Form 7, with counterclaim for interpleader.
18. Summons and third-party complaint — interpleader.

18-A Notice and acknowledgment for service by mail.

19. Motion to intervene as a defendant under Rule 24.
20. Motion for production, etc., under Rule 34.
21. Request for admission under Rule 36.
22. Allegation of reason for omitting necessary party.
23. Supersedeas bond.

Chapter Cross-References

Supreme Court jurisdiction, Art. VII, sec. 2, Mont. Const.

Montana Rules of Civil Procedure applicable in District Court, 2-9-311.

Courts and judicial officers generally, Title 3, ch. 1.

Adoption of M.R.Civ.P., Title 3, ch. 2, part 7.

Supreme Court to make procedural rules, 37-61-307.

Attorney's or litigant's liability for excess costs when he unreasonably multiplies proceedings, 37-61-421.

Application of M.R.Civ.P. to marriage proceedings, 40-1-105.

Application of M.R.Civ.P. to proceedings for divorce and child support, 40-4-103.

Application of M.R.Civ.P. to Uniform Parentage Act, 40-6-115.

Application of M.R.Civ.P. to proceedings for grandparent visitation, 40-9-101.

Application of M.R.Civ.P. to abuse, neglect, and dependency petitions, 41-3-401, 41-3-403.

Application of M.R.Civ.P. to actions for attorney's fees in discrimination cases, 49-2-505.

Application of M.R.Civ.P. to actions to enjoin violations of state or municipal building codes, 50-60-109.

Application of M.R.Civ.P. to hearings for the developmentally disabled, 53-20-123 through 53-20-125, 53-20-127.

Application of M.R.Civ.P. to hearings on petition for commitment of the mentally ill, 53-21-126.

Application of M.R.Civ.P. to actions on bond of motor vehicle owners, 61-6-137.

Application of M.R.Civ.P. to proceedings under the Uniform Probate Code, 72-1-207.

Application of M.R.Civ.P. to actions against Hail Insurance Board, 80-2-243.

Application of M.R.Civ.P. to proceedings to declare appropriation rights abandoned, 85-2-405.

I. Scope of Rules — One Form of Action

Rule 1. Scope of rules. These rules govern the procedure in the district courts of the state of Montana in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81; provided, however, that the discovery procedures set forth in Rules 26 through 37, inclusive, shall be applicable to proceedings in probate. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

History: En. Sec. 1, Ch. 13, L. 1961.

Cross-References

Probate law, Title 72, ch. 1 through 5; Title 72, ch. 10 through 15.

Rule 2. One form of action. There shall be one form of action to be known as "Civil Action."

History: En. Sec. 2, Ch. 13, L. 1961.

Cross-References

One form of civil action, 25-1-101.

II. Commencement of Action — Service of Process, Pleadings, Motions, and Orders

Rule 3. Commencement of action. A civil action is commenced by filing a complaint with the court.

History: En. Sec. 3, Ch. 13, L. 1961.

Cross-References

When action considered pending, 25-1-103.

When action commenced, 27-2-102.

Rule 4. Persons subject to jurisdiction — process — service

Cross-References

Service of process and other papers, Title 25, ch. 3.

Rule 4A. Definition of person. As used in this rule, the word "person," whether or not a citizen or resident of this state and whether or not organized under the laws of this state, includes an individual whether operating in his own name or under a trade name; an individual's agent or personal representative; a corporation; a business trust; an estate; a trust; a partnership; an unincorporated association; and any two or more persons having a joint or common interest or any other legal or commercial entity.

History: **En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.**

Cross-References

Definition of person, 1-1-201.

Rule 4B. Jurisdiction of persons. (1) Subject to jurisdiction. All persons found within the state of Montana are subject to the jurisdiction of the courts of this state. In addition, any person is subject to the jurisdiction of the courts of this state as to any claim for relief arising from the doing personally, through an employee, or through an agent, of any of the following acts:

(a) the transaction of any business within this state;

(b) the commission of any act which results in accrual within this state of a tort action;

(c) the ownership, use or possession of any property, or of any interest therein, situated within this state;

(d) contracting to insure any person, property or risk located within this state at the time of contracting;

(e) entering into a contract for services to be rendered or for materials to be furnished in this state by such person; or

(f) acting as director, manager, trustee, or other officer of any corporation organized under the laws of, or having its principal place of business within this state, or as personal representative of any estate within this state.

(2) Acquisition of jurisdiction. Jurisdiction may be acquired by our courts over any person through service of process as herein provided; or by the voluntary appearance in an action by any person either personally, or through an attorney, or through any other authorized officer, agent or employee.

History: **En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.**

Cross-References

Subject matter jurisdiction of District Courts, 3-5-302.

Lack of jurisdiction as defense, Rule 12(b), M.R.Civ.P.

Rule 4C. Process. (1) Summons — issuance. Upon the filing of the complaint, the clerk shall forthwith issue a summons, and shall deliver the summons either to the sheriff of the county in which the action is filed, or to the person who is to serve it, or upon request, to the attorney for said party who shall thereafter be responsible to see that the summons is served in the manner prescribed by these rules. Upon request, separate or additional summons shall issue against any parties designated in the original action, or against any additional parties who may be brought into the action.

(2) Summons — form. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time

within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. In an action brought to quiet title to real estate, there shall be added to the foregoing, the following: "This action is brought for the purpose of quieting title to land situated in ... County, Montana, and described as follows: (Here insert descriptions of land.)." For exceptions to this form of summons see 4D(4) "Other service," set forth hereinafter.

History: **En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.**

Cross-References

"Process" defined, 25-3-101.

Designating unknown persons as defendants, 25-3-504.

Summoning joint debtors not originally served, 25-15-101.

Summons in Municipal Courts, 25-30-103.

Summons in partition proceedings, 70-29-110.

Rule 4D. Service. (1) By whom served. (a) Service of all process shall be made in the county where the party to be served is found by a sheriff, deputy sheriff, constable, or any other person over the age of 18 not a party to the action.

(b) (i) A summons and complaint may also be served upon a defendant who is an individual other than a minor or an incompetent person or upon a domestic or foreign corporation or partnership or other unincorporated association by mailing a copy of the summons and complaint (by first class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to form 18-A and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this subdivision of this rule is received by the sender within 20 days after the date of mailing the summons and complaint, service of such summons and complaint shall be made by one of the persons mentioned in Rule 4D(1)(a) in the manner prescribed by Rule 4D(2) and Rule 4D(3).

(ii) Unless good cause is shown for not doing so, the court shall order the payment of costs of the personal service by the person served if such person does not complete and return within 20 days after mailing, the notice and acknowledgment of receipt of summons.

(iii) The notice and acknowledgment of receipt of summons and complaint shall be signed and dated. Service of summons and complaint will be deemed complete on the date of signature of the defendant as shown on the acknowledgment.

(2) Personal service within the state. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(a) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given.

(b) Upon a minor over the age of 14 years, by delivering a copy of the summons and complaint to him personally, and by leaving a copy thereof at his dwelling house or usual place of abode with some adult of suitable discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

(c) Upon a minor under the age of 14 years, by delivering a copy of the summons and complaint to his guardian, if he has one within the state, and if not, then to his father or mother or other person or agency having his care or control, or with whom he resides, or if service cannot be made upon any of them, then as provided by order of the court.

(d) Upon a person who has been adjudged of unsound mind by a court of this state, or for whom a guardian has been appointed in this state by reason of incompetency, by delivering a copy of the summons and complaint to his guardian, if there be a guardian residing in this state appointed and acting under the laws of this state. If there be no such guardian, the court shall appoint a guardian ad litem for the incompetent person, with or without personal service on the incompetent, as the court may direct. When a party is alleged to be of unsound mind, but has not been so adjudged by a court of this state, such party may be brought into court by service of process personally upon him. The court may also stay any action pending against a person on learning that such person is of unsound mind.

(e) Upon a domestic corporation, partnership or other unincorporated association, or upon a foreign corporation, partnership or other unincorporated association, established by the laws of any other state or country, and having a place of business within this state or doing business herein either permanently or temporarily, or which was doing business herein either permanently, or temporarily at the time the claim for relief accrued: (i) by delivering a copy of the summons and complaint to an officer, director, superintendent or managing or general agent, or partner, or associate for such corporation, partnership, or association; or by leaving such copies at the office or place of business of the corporation, partnership, or association within the state with the person in charge of such office; or (ii) by delivering a copy of the summons and complaint to the registered agent of said corporation named on the records of the secretary of state, or to any other agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, partnership, or association, provided that if the agent or attorney in fact is one designated by statute to receive service, such further notice as the statute requires shall also be given; or (iii) if the sheriff shall make return that no person upon whom service may be made can be found in the county, then service may be made by leaving a copy of the summons and complaint at any office of the corporation, partnership, or unincorporated association within this state with the person in charge of such office; or (iv) if the suit is against a corporation whose charter or right to do business in the state has expired or been forfeited, by delivering a copy thereof to any one of the persons who have become trustees for the corporation and its stockholders or members.

(f) When a claim for relief is pending in any court of this state against a corporation organized under the laws of this state, or against a corporation organized under the laws of any other state or country, that has filed a copy of its charter in the office of the secretary of state of Montana and qualified to do business in Montana; or against a corporation organized under the laws of any other state or country which is subject to the jurisdiction of the courts of this state under the provisions of Rule 4B above, even though such corporation has never qualified to do business in Montana; or against a national banking corporation which, through insolvency or lapse of charter, has ceased to do business in Montana; and none of the persons designated in D(2)(e) immediately above can with the exercise of reasonable diligence be found within Montana, the party causing summons to be issued shall exercise reasonable diligence to ascertain the last known address of any such person. Upon the filing with the clerk of court in which the claim for relief is pending of an affidavit reciting that none of the persons designated in D(2)(e) can after due diligence be found within Montana upon whom service of process can be made, and reciting the last known address of any such person, or reciting that after the exercise of reasonable diligence no such address for any such person could be found, and there has also been deposited with the said clerk the sum of $5 to be paid to the secretary of state as a fee for each of said defendants for whom the secretary of state is to receive said service, then the clerk of court shall issue an order directing process to be served upon the secretary of state of the state of Montana or, in his absence from his office, upon the deputy secretary of state of the state of Montana. Such affidavit shall be sufficient evidence of the diligence of inquiry made by affiant, if the affidavit recites that diligent inquiry was made, and the affidavit need not detail the facts constituting such inquiry. Whenever service is also to be made through publication as provided in 4D(5), or upon other persons as provided in 4D(6), the affidavit herein required may be combined in the same instrument with the affidavit required under 4D(5)(c) and 4D(6). The said clerk of court shall then mail to the secretary of state the original summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee for service, to the office of the secretary of state. The secretary of state shall mail copy of the summons and complaint by certified or registered mail with a return receipt requested to the last known address of any of the persons designated in D(2)(e) above, if known, or, if none such is known and it is a corporation not organized in Montana, to the secretary of state of the state in which such corporation was originally incorporated, if known; and the secretary of state shall make his return as hereinafter provided under Rule 4D(6). When service is so made, it shall be deemed personal service on such corporation, and the said secretary of state, or his deputy when the secretary is absent from his office, is hereby appointed agent of such corporation for service of process in cases hereinbefore mentioned. In any action where due diligence has been exercised to locate and serve any of the persons designated in D(2)(e) above, service shall be deemed complete upon said corporation regardless of the receipt of any return receipt or advice of refusal of the addressee to receive the process mailed, as is hereinafter required by 4D(6); provided, however, that except in those actions where any of the persons designated in D(2)(e) above have been located and served personally as hereinabove provided, then service by publication shall also be made as provided hereafter in 4D(5)(d) and 4D(5)(h); the first publication must be made within 60 days from the date the original summons is mailed to the secretary of state as herein provided, and if said first publication is not so made, the action shall be deemed dismissed as to any such party intended to be served by such publication; and service shall be complete upon the date of the last publication of summons.

When service of process is made as herein provided, and there is no appearance thereafter made by any attorney for such corporation, service of all other notices required by law to be served in such action may be served upon the secretary of state.

(g) Upon a city, village, town, school district, county, or public agency or board of any such public bodies, by delivering a copy of the summons and complaint to any commissioner, trustee, board member, mayor or head of the legislative department thereof.

(h) Upon the state, or any state board or state agency, by delivering a copy of the summons and complaint to the attorney general and to any other party which may be prescribed by statute.

(i) Upon an estate by delivering a copy of the summons and complaint to the personal representative thereof; upon a trust by delivering a copy of the summons and complaint to any trustee thereof.

(3) Personal service outside the state. Where service upon any person cannot, with due diligence, be made personally within this state, service of summons and complaint may be made by service outside this state in the manner provided for service within this state, with the same force and effect as though service had been made within this state. Where service by publication is permitted as hereinafter provided, personal service of a summons and complaint upon the defendant out of the state shall be equivalent to and shall dispense with the procedures and the publication and mailing provided for hereafter in 4(5)(c), 4(5)(d) and 4(5)(e) of this rule.

(4) Other service. All process in any form of action shall be served in the manner specified in this rule with the exception that whenever a statute of this state or an order of the court or a citation by the court made pursuant thereto provides for the service of a notice or of an order or of a citation in lieu of summons upon any person, service shall be made under the circumstances and in the manner prescribed by the statute or order or citation; and with the further exception that all persons are required to comply with the provisions hereafter prescribed in D(5)(h), and with the provisions of 33-1-603, 33-1-613, 33-1-614, 33-2-314, 33-2-315, 70-28-207, 70-28-208, 70-28-209, and 70-28-212, Montana Code Annotated, when the action pertains to the provisions of such sections.

(5) Service by publication — when permitted — effect — manner — proof.

(a) When permitted. A defendant, whether known or unknown, who has not been served under the foregoing subsections of this rule can be served by publication in the following situations only:

(i) When the subject of the action is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest therein. This subsection shall apply whether any such defendant is known or unknown.

(ii) When the action is to foreclose, redeem from or satisfy a mortgage, claim or lien upon real or personal property within this state.

(iii) When the action is for dissolution or for a declaration of invalidity of a marriage of a resident of this state or for modification of a decree of dissolution granted by a court of this state.

(iv) When the defendant has property within this state which has been attached or has a debtor within this state, who has been garnished. Jurisdiction under this subsection may be independent of or supplementary to jurisdiction acquired under subsections (5)(a)(i), (5)(a)(ii), and (5)(a)(iii) herein.

(b) Effect of service by publication. When a defendant, whether known or unknown, has been served by publication as provided in this rule, any court of this state having jurisdiction may render a decree which will adjudicate any interest of such defendant in the status, property, or thing acted upon, but it may not bind the defendant personally to the personal jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

(c) Filing of pleading and affidavit for service by publication; and order for publication. Before service of the summons by publication is authorized in any case, there shall be filed with the clerk in the district court of the county in which the action is commenced (i) a pleading setting forth a claim in favor of the plaintiff and against the defendant in one of the situations defined in (5)(a) above; and (ii) in situations defined in (5)(a)(i), (5)(a)(ii), (5)(a)(iii), upon return of the summons showing the failure to find any defendant designated in the complaint, an affidavit stating that such defendant resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons; or, if the defendant is a domestic or foreign corporation, that none of the persons designated in D(2)(e) above can, after due diligence, be found within the state; or, if the defendant is an unknown claimant, by showing that he has made diligent search and inquiry for all persons who claim, or might claim any right, title, estate, or interest in, or lien, or encumbrance upon, such property, or any thereof, adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any right of dower, inchoate or accrued, and that he has specifically named as defendants in such action all such persons whose names can be ascertained; such affidavit shall be sufficient evidence of the diligence of any inquiry made by the affiant, if the affidavit recite the fact that diligent inquiry was made, and it need not detail the facts constituting such inquiry, and if desired, it may be combined in one instrument with the affidavit required under 4D(2)(f), or 4D(6); and (iii) in the situation defined in (5)(a)(iv) above, there must be first presented to the court proof that a valid attachment or garnishment has been effected. Upon complying herewith, the plaintiff may obtain an order for the service of summons to be made upon the defendants by publication, which order may be issued by either the judge or the clerk of the court.

(d) Number of publications. Service of the summons by publication may be made by publishing the same three times, once each week for 3 successive weeks, in a newspaper published in the county in which the action is pending, if a newspaper is published in such county, and if no newspaper is published in such county then in a newspaper published in an adjoining county and having a general circulation therein.

(e) Mailing summons and complaint. A copy of the summons for publication and complaint, at any time after the filing of the affidavit for publication and not later than 10 days after the first publication of the summons, shall be deposited in some post office in this state, postage prepaid, and directed to the defendant at his place of residence unless the affidavit for publication states that the residence of the defendant is unknown. If the defendant is a corporation, and personal service cannot with due diligence be effected within Montana on any of the persons designated in D(2)(e) above, then service may be completed on said corporation by service upon the secretary of state in the manner, and following the procedure outlined in D(2)(f) above.

(f) Time when first publication or service outside state must be made. The first publication of summons, or personal service of the summons and complaint upon the defendant out of the state, must be made within 60 days after the filing of the affidavit for publication. If not so made, the action shall be deemed dismissed as to any party intended to be served by such publication.

(g) When service by publication or outside state complete. Service by publication is complete on the date of the last publication of the summons, or in case of personal service of the summons and complaint upon the defendant out of the state, on the date of such service.

(h) Additional information to be published. In addition to the form of summons prescribed above in "C. Process, (2) Summons—form," the published summons shall state in general terms the nature of the action, and in all cases where publication of summons is made in an action in which the title to, or any interest in or lien upon real property is involved, or affected, or brought into question, the publication shall also contain a description of the real property involved, affected or brought into question thereby, and a statement of the object of the action.

(6) (a) Service on secretary of state. Whenever service is to be made upon certain corporations as provided hereinabove in D(2)(f) and D(5)(e), the requirements of said D(2)(f) must be complied with. In all other cases, unless otherwise provided by statute, whenever the secretary of state of the state of Montana has been appointed, or is deemed by law to have been appointed, as the agent to receive service of process for any person who cannot with due diligence be found or served personally within Montana, the party, or his attorney, shall make an affidavit stating the facts showing that the secretary of state is such agent, and stating the residence and last known post-office address of the person to be served, and shall file such affidavit with the clerk of court in which such claim for relief is pending, accompanied by sufficient copies of the affidavit, summons and complaint for service upon the secretary of state, and there has also been deposited with the clerk of the court in which such claim for relief is pending the sum of $5 to be paid to the secretary of state as a fee for each of said defendants for whom the secretary of state is to receive such service; then the clerk shall forward the original summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, and one copy of the summons attached to copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee, to the office of the secretary of state.

Such service on the secretary of state shall be sufficient personal service upon the person to be served, provided that notice of such service and a copy of the summons and complaint are forthwith sent by registered or certified mail by the secretary of state or his deputy to the party to be served at his last known address, marked "Deliver to Addressee Only" and "Return Receipt Requested," and provided further that such return receipt shall be received by the secretary of state purporting to have been signed by said addressee, or the secretary of state shall be advised by the postal authority that delivery of said registered or certified mail was refused by said addressee, except in those cases where compliance is excused under the provisions of D(2)(f) above. The date upon which the secretary of state receives said return receipt, or receives advice by the postal authority that delivery of said registered or certified mail was refused by the addressee, shall be deemed the date of service.

As an alternative to sending the summons and complaint by registered or certified mail, as herein provided, the secretary of state, or his deputy, may cause copy of the summons and complaint to be served by any qualified law enforcement officer, in accord with the procedure set out in D(1), (2) or (3) of this rule.

The secretary of state, or his deputy, shall make an original and two copies of an affidavit reciting: (1) the fact of service upon him by the clerk of court, including the day, and hour of such service; (2) the fact of his mailing a copy of the summons and complaint and notice to the defendant, including the day and hour thereof, except in those cases where he is relieved from doing so under the provisions of D(2)(f) in which cases his affidavit shall so recite; and (3) the fact of his receipt of a return from the postal department including the date, and hour thereof, and attaching to his affidavit a copy of such return. The secretary of state, or his deputy, shall then transmit the original summons, and his original affidavit along with copy of his notice to the defendant where such notice was required, to the clerk of court in which the claim for relief is pending, and it shall be filed in the claim for relief by said clerk of court; and the secretary of state shall also transmit to the attorney for the plaintiff copy of the affidavit of the secretary of state along with copy of the notice to the defendant where such notice was required. The secretary of state shall keep on file in his office a copy of the summons, a copy of the affidavit served on him by the clerk of court, and a copy of the affidavit executed and issued by the secretary of state.

(b) Continuance to allow defense. In any of the cases provided for in Rule 4D(2)(f) above, or provided for hereinabove in 4D(6)(a), the court in which the claim for relief is pending may order such continuance as may be necessary to afford reasonable opportunity to defend the action.

(7) Amendment. At any time, in its discretion, and upon such notice and terms as it deems just, the court may allow any process or proof of service thereof to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(8) Proof of service. Proof of the service of the summons and of the complaint or notice, if any, accompanying the same must be as follows:

(a) If served by the sheriff or other officer, his certificate thereof;

(b) If by any other person, his affidavit thereof;

(c) In case of publication an affidavit of the publisher and an affidavit of the deposit of a copy of the summons and complaint in the post office as required by law, if the same shall have been deposited; or

(d) The written admission of the defendant showing the date and place of service.

(e) If service is made under Rule 4D(1)(b) above, return shall be made by the sender's filing with the court the acknowledgment received pursuant to such subdivision. Failure to make proof of service does not affect the validity of the service.

The certificate or affidavit of service mentioned in this subdivision must state the time, date, place, and manner of service.

(9) Contents of affidavit of service. Whenever a process, pleading, order of court, or other paper is served personally by a person other than the sheriff or person designated by law, the affidavit of service when made, shall state that the person so serving is of legal age, and the date and place of making the service. It also shall state that the person making such service knew the person served to be the person named in the papers served and the person intended to be served.

(10) Procedure where only part of defendants are served. If the summons is served on one or more, but not all, of the defendants, the plaintiff may proceed to trial and judgment against the defendant or defendants on whom the process is served, and may at any time thereafter have a summons against the defendant not served with the first process to cause him to appear in said court to show cause why he should not be made a party to such judgment. Upon such defendant being duly served with such process, the court shall hear and determine the matter in the same manner as if such defendant had been originally brought into court, and such defendant shall also be allowed the benefit of any payment or satisfaction which may have been made on the judgment before recovered.

History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750, Nov. 28, 1966, eff. Jan. 1, 1967; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References

Service in national parks, 2-1-205, 2-1-207.

Service on Indian land, 2-1-307.

Service of process on state, 2-9-313.

Process of District Courts, 3-5-304.

Service of process and other papers, Title 25, ch. 3.

Secretary of State's fees for accepting service of process, 25-10-206.

No charge for copies furnished by party, 25-10-402.

Permissible use for affidavits, 26-1-1002.

Affidavit of printer or publisher as evidence of publication, 26-1-1011.

Corporate stock — service on Secretary of State, 27-18-410.

Duty of Secretary of State — fees, 27-18-411.

Service of Writ of Certiorari, 27-25-204.

Service of Writ of Mandamus, 27-26-205.

Service of summons in quo warranto action, 27-28-202, 27-28-203.

Commissioner of insurance as attorney for service of process, 33-1-601.

Service of process on foreign, alien, and domestic insurance corporations, 33-1-602.

Serving process on insurance companies, 33-1-603.

Service of process upon corporation, 35-1-307.

Service of process on foreign corporation, 35-1-1014.

Service of process upon nonprofit corporation, 35-2-304.

Service of summons in action for forcible entry and unlawful detainer, 70-27-114.

Action for partition of real property, manner of service, 70-29-111.

Rule 5. Service and filing of pleadings and other papers

Rule 5(a). Service — when required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

History: **En. Sec. 5, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.**

Cross-References

Service of papers after defendant's appearance, Title 25, ch. 3, part 4.

Service of notice of intent to institute forfeiture proceedings, 44-12-201.

Rule 5(b). Service — how made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

History: **En. Sec. 5, Ch. 13, L. 1961.**

Cross-References

Service by an officer, Title 25, ch. 3, part 2.

Rule 5(c). Service — numerous defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

History: **En. Sec. 5, Ch. 13, L. 1961.**

Rule 5(d). Filing. All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter.

History: **En. Sec. 5, Ch. 13, L. 1961.**

Rule 5(e). Filing with the court defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

History: En. Sec. 5, Ch. 13, L. 1961.

Rule 5(f). Proof of service. Proof of service shall be made by an affidavit of the party or his attorney making service, or by the certificate of his resident attorney making service or by an acknowledgment in writing from the party or attorney served, and such affidavit, certificate or acknowledgment shall be filed within 10 days after service. Failure to make proof of service does not affect the validity of the service.

History: En. Sec. 5, Ch. 13, L. 1961.

Rule 6. Time

Rule 6(a). Computation. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

History: En. Sec. 6, Ch. 13, L. 1961.

Cross-References

Computation of time, 1-1-306.

Postponement of day appointed for an action when it falls on a holiday, 1-1-307.

Service of extraordinary writs on legal holidays, 3-5-302.

Computation and extension of time in appellate procedure, Rule 21, M.R.App.P. (see Title 25, ch. 21).

Rule 6(b). Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b) and (c)(2), 52(b), 59(b), (d), (e) and (g), and 60(b), except to the extent and under the conditions stated in them.

History: En. Sec. 6, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References

Extension of time, 25-1-301.

Rule 6(c). Unaffected by expiration of term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action which has been pending before it.

History: **En. Sec. 6, Ch. 13, L. 1961.**

Rule 6(d). For motions — affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

History: **En. Sec. 6, Ch. 13, L. 1961.**

Rule 6(e). Additional time after service by mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

History: **En. Sec. 6, Ch. 13, L. 1961.**

III. Pleadings and Motions

Rule 7. Pleadings allowed — form of motions

Cross-References

Pleadings, motions, and other papers, Title 25, ch. 4.

Rule 7(a). Pleadings. There shall be a complaint and an answer; and there shall be a reply to a counterclaim denominated as such; and an answer to a cross-claim; a third-party complaint, if a person who was not an original party is summoned under Rule 14; and there shall be a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

History: **En. Sec. 7, Ch. 13, L. 1961.**

Cross-References

Sovereignty and style of process, 2-1-101.

Rule 7(b). Motions and other papers. (1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) All motions shall be signed in accordance with Rule 11.

History: **En. Sec. 7, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.**

Cross-References

Evidence on motions, Rule 43(e), M.R.Civ.P.

Rule 7(c). Demurrers, pleas, etc., abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

History: En. Sec. 7, Ch. 13, L. 1961.

Cross-References

Exceptions unnecessary, Rule 46, M.R.Civ.P.

Demurrers abolished in Justice's Court, 25-31-503.

Rule 8. General rules of pleading

Cross-References

Pleadings, motions, and other papers, Title 25, ch. 4.

Rule 8(a). Claims for relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

History: En. Sec. 8, Ch. 13, L. 1961.

Rule 8(b). Defenses — form of denials. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11.

History: En. Sec. 8, Ch. 13, L. 1961; amd. Sup. Ct. Ord. June 1, 1964, eff. July 1, 1964.

Cross-References

Procedure where answer admits part of plaintiff's claim, 25-4-601.

Rule 8(c). Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

History: En. Sec. 8, Ch. 13, L. 1961; amd. Sup. Ct. Ord. June 1, 1964, eff. July 1, 1964.

Cross-References

Compromise or settlement of a debt by unsealed writing, 1-4-207.

Pleading special matters, Title 25, ch. 4, part 3.

Cross-claim to be asserted in answer, 25-4-404.

Complete list of conclusive presumptions, 26-1-601.

Effect of former judgments and orders, Title 26, ch. 3.

Comparative negligence — extent to which contributory negligence bars recovery in action for damages, 27-1-702.

Statutes of Limitations, Title 27, ch. 2.

Arbitration, Title 27, ch. 5.

Accord and satisfaction, Title 28, ch. 1, part 14.

Form, formation, and readjustment of contract, Title 30, ch. 2, part 2.

Remedies for fraud, 30-2-721.

Defense of ultra vires, 35-1-110, 35-2-110.

Estoppel applicable to law of partnerships, 35-10-104.

Partner by estoppel, 35-10-308.

Rule 8(d). Effect of failure to deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

History: En. Sec. 8, Ch. 13, L. 1961.

Cross-References

Procedure after claims partially admitted, Title 25, ch. 4, part 6.

Effect of admission, Rule 36(b), M.R.Civ.P.

Rule 8(e). Pleading to be concise and direct — consistency. (1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motion are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

History: En. Sec. 8, Ch. 13, L. 1961.

Rule 8(f). Construction of pleadings. All pleadings shall be so construed as to do substantial justice.

History: En. Sec. 8, Ch. 13, L. 1961.

Rule 9. Pleading special matters

Cross-References

Pleading special matters, Title 25, ch. 4, part 3.

Rule 9(a). Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

History: En. Sec. 9, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Rule 9(b). Fraud, mistake, condition of the mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

History: **En. Sec. 9, Ch. 13, L. 1961.**

Rule 9(c). Conditions precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

History: **En. Sec. 9, Ch. 13, L. 1961.**

Cross-References

Types of conditions, 28-1-402.

Mistake and fraud, Title 28, ch. 2, part 4.

Rule 9(d). Official document, act, ordinance or statute. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law. In pleading any ordinance or regulation of any county, city, village, or other political subdivision of this state, or any special, local or private statute, or any right derived therefrom, or the laws of another jurisdiction, it is sufficient to refer to the ordinance, regulation, statute or law by its title and the date of its passage, or by the appropriate designation in the official or recognized compilation thereof.

History: **En. Sec. 9, Ch. 13, L. 1961.**

Cross-References

Judicial notice of law, Rule 202, Montana Rules of Evidence (see Title 26, ch. 10).

Rule 9(e). Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

History: **En. Sec. 9, Ch. 13, L. 1961.**

Cross-References

Effect of former judgments and orders, Title 26, ch. 3.

Rule 9(f). Time and place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

History: **En. Sec. 9, Ch. 13, L. 1961.**

Rule 9(g). Special damage. When items of special damage are claimed, they shall be specifically stated.

History: **En. Sec. 9, Ch. 13, L. 1961.**

Rule 10. Form of pleadings

Rule 10(a). Caption — names of parties. Every pleading shall contain a caption setting forth the name, district and county of the court, the title of the action, the number of the action, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

History: **En. Sec. 10, Ch. 13, L. 1961.**

Cross-References

Designation of parties, Title 25, ch. 5, part 1.

Rule 10(b). Paragraphs — separate statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

History: **En. Sec. 10, Ch. 13, L. 1961.**

Cross-References

Reply to counterclaim or new matter in Municipal Courts, 25-30-104.

Rule 10(c). Adoption by reference — exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

History: **En. Sec. 10, Ch. 13, L. 1961.**

Cross-References

Copy of written instrument in pleadings, 25-4-202.

Rule 11. Signing of pleadings, motions, and other papers — sanctions. Every pleading, motion, or other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

History: **En. Sec. 11, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.**

Cross-References
Verification of pleadings, 25-4-203.
Permissible use of affidavits, 26-1-1002.

Rule 12. Defenses and objections — when and how presented — by pleading or motion — motion for judgment on pleadings

Rule 12(a). When presented. Except as otherwise provided by statute applicable to particular defendants or proceedings, the responsive pleadings shall be served as follows: A defendant shall serve his answer within 20 days after the service of the summons and complaint upon him, or within 20 days after the completion of service of process as provided in Rule 4, unless the court directs otherwise when service of process is made pursuant to Rule 4D(4). A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the court, within 20 days after service of the order or such time as the order otherwise directs. The state, or any state board or state agency shall serve an answer to the complaint within 40 days after service upon the attorney general. Unless a different time is fixed by the court, when a motion permitted by these rules is served, the responsive pleading shall be served within 20 days after notice of the court's action if the court denies the motion or postpones its disposition until trial on the merits, and shall be served within 20 days after the service of the more definite statement if the court grants a motion for a more definite statement.

History: En. Sec. 12, Ch. 13, L. 1961; amd Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References
Time for amendment or reply after motion on pleadings, 25-4-204.
Summons in Municipal Courts, 25-30-103.

Rule 12(b). How presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to the claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56.

(i) The cases in which place of trial may be changed are specified in section 25-2-201, Montana Code Annotated.

(ii) If the county designated in the complaint is not the proper county for trial of the action, the defendant must at the time of his first appearance request by motion that the trial be had in the proper county. Every defense in law or fact, to a claim for relief in any pleading which defendant desires to present by way of motion as hereinabove provided must be joined with, or inserted in, the motion requesting a change in the place of trial. If the court in which the action is commenced grants the request for change of venue, that court shall not consider nor pass upon other defenses in law, or fact, presented by the motion, but such shall be considered and decided by the court sitting in the proper county after the transfer has been completed. No request for change of venue is waived by being joined in a motion with other defenses or objections in law or fact.

(iii) Any request for change in place of trial for grounds 2 and 3 of section 25-2-201, Montana Code Annotated, must be presented by motion within 20 days after the answer to the complaint, or to the cross-claim where a cross-claim is filed, or the reply to any answer, in those cases in which a reply is authorized, has been filed; except that whenever at some time more than 20 days after the last pleading has been filed an event occurs which thereafter affords good cause to believe that an impartial trial cannot be had under ground 2 of said section 25-2-201, and competent proof is submitted to the court that such cause of impartiality did not exist within the 20-day period after the last pleading was filed, then the court may entertain a motion to change the place of trial under ground 2 of section 25-2-201 within 20 days after that later event occurs.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References

Motions and orders when judge absent, 25-4-101.

Transfer when judge unable to hear motion or return of order, 25-4-102.

Vacating or modifying order made without notice, 25-4-103.

Costs of securing witnesses — substitution of judge, 25-10-205.

Motions and other papers, Rule 7(b), M.R.Civ.P.

Evidence on motions, Rule 43(e), M.R.Civ.P.

Findings of fact and conclusions of law unnecessary, Rule 52(a), M.R.Civ.P.

Rule 12(c). Motion for judgment on the pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963.

Rule 12(d). Preliminary hearings. The defenses specifically enumerated (1) - (7) in subdivision (b) of this rule whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until trial.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Rule 12(e). Motion for more definite statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963.

Rule 12(f). Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963.

Rule 12(g). Consolidation of defenses in motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Rule 12(h). Waiver or preservation of certain defenses. (1) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References

Subject matter jurisdiction of District Courts, 3-5-302.

Pleading special matters, Title 25, ch. 4, part 3.

Jurisdiction of persons, Rule 4B, M.R.Civ.P.

Service of process, Rule 4D, M.R.Civ.P.

Rule 13. Counterclaim and cross-claim

Cross-References

Counterclaim and cross-claim, Title 25, ch. 4, part 4.

Mode of trial upon counterclaim, 25-7-104.

Rule 13(a). Compulsory counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

History: En. Sec. 13, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Rule 13(b). Permissive counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

History: En. Sec. 13, Ch. 13, L. 1961.

Cross-References

Effect on counterclaim of termination of action, 27-2-408.

Rule 13(c). Counterclaim exceeding opposing claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

History: En. Sec. 13, Ch. 13, L. 1961.

Cross-References

Judgment for excess when plaintiff admits counterclaim, 25-4-602.

Rule 13(d). Counterclaim against the state. These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the state of Montana or any of its governmental subdivisions, agencies or officers.

History: En. Sec. 13, Ch. 13, L. 1961.

Cross-References

Sovereign immunity abolished except as provided by statute, Art. II, sec. 18, Mont. Const.

Liability exposure and insurance coverage, Title 2, ch. 9.

Judgments against county or county officers, 25-13-205.

Governmental property exempt from execution, 25-13-613.

Rule 13(e). Counterclaim maturing or acquired after pleading. A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

History: En. Sec. 13, Ch. 13, L. 1961.

Cross-References
Supplemental pleadings, Rule 15(d), M.R.Civ.P.

Rule 13(f). Omitted counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of court set up the counterclaim by amendment.

History: En. Sec. 13, Ch. 13, L. 1961.

Rule 13(g). Cross-claim against coparty. A pleading may state as a cross-claim any claim by one party against a coparty arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

History: En. Sec. 13, Ch. 13, L. 1961.

Cross-References
Interpleader, Rule 22, M.R.Civ.P.

Rule 13(h). Joinder of additional parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

History: En. Sec. 13, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References
Misjoinder and nonjoinder of parties, Rule 21, M.R.Civ.P.

Rule 13(i). Separate trials — separate judgment. If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b), even if the claims of the opposing party have been dismissed or otherwise disposed of.

History: En. Sec. 13, Ch. 13, L. 1961.

Cross-References
Mode of trial upon counterclaim, 25-7-104.

Rule 14. Third-party practice

Rule 14(a). When defendant may bring in third party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. The third-party plaintiff need not obtain leave to make the service if he files the third-party complaint not later than 30 days after he serves his original answer. Otherwise he must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Rule 12 and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in Rule 12 and his counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial; the court may direct a final judgment upon either the original claim or the third-party claim alone in accordance with the provisions of Rule 54(b). A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.

History: En. Sec. 14, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References

Commencement of action, Rule 3, M.R.Civ.P.

Rule 14(b). When plaintiff may bring in third party. When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

History: En. Sec. 14, Ch. 13, L. 1961.

Rule 15. Amended and supplemental pleadings

Rule 15(a). Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

History: En. Sec. 15, Ch. 13, L. 1961.

Cross-References

Time for amendment or reply after motion on pleading, 25-4-204.

Rule 15(b). Amendments to conform to the evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to so amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

History: En. Sec. 15, Ch. 13, L. 1961.

Rule 15(c). Relation back of amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

The requirements of clauses (1) and (2) hereof are satisfied with respect to any city, village, town, school district, county, or public agency, board or officer of such public bodies, and with respect to the state or any state board, agency or officer thereof, to be brought into the action as defendant, if process is served as provided by Rule 4D(2)(g) and (h) for service upon such defendant.

History: En. Sec. 15, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Rule 15(d). Supplemental pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented, whether or not the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor.

History: En. Sec. 15, Ch. 13, L. 1961.

Rule 16. Pretrial conferences — scheduling — management

Rule 16(a). Pretrial conferences — objectives. In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation, and;

(5) facilitating the settlement of the case.

History: **En. Sec. 16, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.**

Rule 16(b). Scheduling and planning. Except in categories of actions exempted by district court rule as inappropriate, the judge shall, after consulting with the attorneys for the parties and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time

(1) to join other parties and to amend the pleadings;

(2) to file and hear motions; and

(3) to complete discovery.

The scheduling order also may include

(4) the date or dates for conferences before trial, final pretrial conference, and trial; and

(5) any other matters appropriate in the circumstances of the case.

The order shall issue as soon as practicable but in no event more than 120 days after filing of the complaint. A schedule shall not be modified except by leave of the judge upon a showing of good cause.

History: **En. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.**

Rule 16(c). Subjects to be discussed at pretrial conferences. The participants at any conference under this rule may consider and take action with respect to

(1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) the avoidance of unnecessary proof and of cumulative evidence;

(5) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(6) the advisability of referring matters to a master;

(7) the possibility of settlement or the use of extrajudicial procedures to resolve the dispute;

(8) the form and substance of the pretrial order;

(9) the disposition of pending motions;

(10) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and

(11) the time for submission of proposed findings of fact and conclusions of law in a non-jury action, or proposed instructions to the jury and the form of verdict in a jury action, and such other matters as may aid in the disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.

History: **En. Sec. 16, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.**

Rule 16(d). Final pretrial conference. Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

History: **En. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.**

Rule 16(e). Pretrial orders. After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

History: **En. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.**

Rule 16(f). Sanctions. If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or his own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing him or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

History: **En. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.**

IV. Parties

Part Cross-References

Parties, Title 25, ch. 5.

Rule 17. Parties plaintiff and defendant — capacity

Cross-References

Capacity to be a party — joinder, Title 25, ch. 5, part 2.

Rule 17(a). Real party in interest. Every action shall be prosecuted in the name of the real party in interest. A personal representative, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the state of Montana so provides, an action for the use or benefit of another shall be brought in the name of the state of Montana. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

History: En. Sec. 17, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References

Quo warranto, Title 27, ch. 28.

Nuisances, parties, 27-30-103.

Paternity proceedings, parties, 40-6-110.

Forcible entry and detainer, parties, 70-27-111.

Partition, parties, 70-29-104, 70-29-105.

Foreclosure proceedings, parties, 71-1-222.

Rule 17(b). Capacity to sue or be sued. The capacity of persons to sue or be sued shall be determined by appropriate statutory provisions.

History: En. Sec. 17, Ch. 13, L. 1961.

Cross-References

Capacity to be a party — joinder, Title 25, ch. 5, part 2.

Power of foreign corporation to sue and be sued, 32-1-103.

Power of credit union to sue and be sued, 32-3-401.

Power of corporation to sue and be sued, 35-1-108.

Power of corporate receiver to sue and be sued, 35-1-922.

Power of nonprofit corporation to sue and be sued, 35-2-107.

Power of receiver of nonprofit corporation to sue and be sued, 35-2-712.

Power of religious corporation to sue and be sued, 35-3-205.

Power of business trust to sue and be sued, 35-5-103.

Rule 17(c). Infants or incompetent persons. Whenever an infant or incompetent person has a representative, such as a general guardian, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person, or in any case where the court deems it expedient a guardian ad litem may be appointed to represent an infant or incompetent person, even though the infant or incompetent person may have a general guardian and may have appeared by him.

History: En. Sec. 17, Ch. 13, L. 1961.

Cross-References

Guardian ad litem, Title 25, ch. 5, part 3.

Substitution of parties, incompetency, Rule 25(b), M.R.Civ.P.

Right of minor to bring civil action or other proceedings, 27-1-511.

Parties in paternity proceedings, guardian, 40-6-110.

When parental authority ceases, 40-6-234.

Enforcement of minor's rights, 41-1-202.

Appointment of guardian in proceedings for child abuse, neglect, and dependency, 41-3-303, 41-3-401.

Appointment of guardian ad litem in youth court, 41-5-512.

Guardians of minors, Title 72, ch. 5, part 2.

Guardians of incapacitated persons, Title 72, ch. 5, part 3.

Rule 18. Joinder of claims and remedies

Rule 18(a). Joinder of claims. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims either legal or equitable or both as he has against an opposing party or coparty.

History: En. Sec. 18, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References
Pleading inconsistent claims, Rule 8(e), M.R.Civ.P.

Rule 18(b). Joinder of remedies — fraudulent conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money. This rule shall not be applied in tort cases so as to permit the joinder of a liability or indemnity insurance carrier, unless such carrier is by law or contract directly liable to the person injured or damaged.

History: En. Sec. 18, Ch. 13, L. 1961.

Cross-References
Availability of remedies, Title 27, ch. 1.
Remedies for fraudulent conveyances, 31-2-321 through 31-2-323.

Rule 19. Joinder of persons needed for just adjudication

Cross-References
Capacity to be a party — joinder, Title 25, ch. 5, part 2.

Rule 19(a). Persons to be joined if feasible. A person who is subject to service of process shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

History: En. Sec. 19, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Rule 19(b). Determination by court of whenever joinder not feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the peron's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

History: En. Sec. 19, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Rule 19(c). Pleading reasons for nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

History: En. Sec. 19, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References

Designating unknown persons as defendants, 25-3-504.

Suing a party by a fictitious name, 25-5-103.

Rule 19(d). Exception of class actions. This rule is subject to the provisions of Rule 23.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Rule 20. Permissive joinder of parties

Rule 20(a). Permissive joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

History: En. Sec. 20, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References

Defendants — adverse claims to real property, 25-5-203.

Joinder of state as defendant in actions affecting title to property, 25-5-204.

Action for accounting for royalty from oil or gas, 82-10-101.

Rule 20(b). Separate trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

History: En. Sec. 20, Ch. 13, L. 1961.

Rule 21. Misjoinder and nonjoinder of parties. Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

History: **En. Sec. 21, Ch. 13, L. 1961.**

Rule 22. Interpleader

Rule 22(a). By joinder, cross-claim or counterclaim. Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

History: **En. Sec. 22, Ch. 13, L. 1961.**

Rule 22(b). By substitution. A defendant against whom an action is pending upon a contract, or for specific real or personal property, at any time before answer, upon affidavit that a person not a party to the action and without collusion with him makes against him a demand for the same debt or property, upon due notice to such person and the adverse party, may apply to the court for an order to substitute such person in his place and to discharge him from liability to either party on his depositing in court the amount of the debt, or delivering the property or its value to such person as the court may direct, and the court, in its discretion, may make the order.

History: **En. Sec. 22, Ch. 13, L. 1961.**

Cross-References

Deposits in court, Title 25, ch. 8.

Affidavits, Title 26, ch. 1, part 10.

Rule 23. Class actions

Rule 23(a). Prerequisites to a class action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

History: **En. Sec. 23, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.**

Rule 23(b). Class actions maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition: (1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

History: En. Sec. 23, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Rule 23(c). Determination by order whether class action to be maintained — notice — judgment — actions conducted partially as class actions. (1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

History: En. Sec. 23, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Rule 23(d). Order in conduct of actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

History: En. Sec. 23, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References

Order of trial, 25-7-301.

Rule 23(e). Dismissal or compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Rule 23(f). Security for costs. Security for costs and charges, which may be awarded against a representative party, may be required by an opposing party. When required, all proceedings in the action must be stayed until an undertaking, executed by two or more persons, is filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the representative party by judgment, or in the progress of the action, not exceeding the sum of $1,000. A new or an additional undertaking may be ordered by the court or judge, upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new or additional undertaking is executed and filed.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References

Undertaking for security, Title 25, ch. 1, part 4.

Security for costs, Title 25, ch. 10, part 6.

Rule 23.1. Derivative actions by shareholders. In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

History: **En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.**

Cross-References

Defense of ultra vires, 35-1-110.

Actions by shareholders, 35-1-514.

Rule 23.2. Actions relating to unincorporated associations. An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e).

History: **En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.**

Rule 24. Intervention

Rule 24(a). Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

History: **En. Sec. 24, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.**

Rule 24(b). Permissive intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

History: **En. Sec. 24, Ch. 13, L. 1961.**

Rule 24(c). Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene. When the constitutionality of an act of the legislative assembly affecting the public interest is drawn in question in any action to which neither the state nor any agency or officer thereof is a party, the court shall notify the attorney general of the state and the attorney general may within 20 days thereafter intervene in the same manner on behalf of the state.

History: En. Sec. 24, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References

Notice to Attorney General, Title 25, ch. 1, part 5.

Service required on Attorney General, Rule 4D(2)(h), M.R.Civ.P.

Attorney General to be notified of constitutional questions, Rule 38, M.R.App.P. (see Title 25, ch. 21).

Rule 25. Substitution of parties

Cross-References

Vacancy and succession, Title 2, ch. 16, part 5.

Substitution of parties, Rule 37, M.R.App.P. (see Title 25, ch. 21).

Right to bring action or assert defense, Title 27, ch. 1, part 5.

When a party dies before action commenced, 27-2-404.

Rule 25(a). Death. (1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any judicial district. If substitution is not made within a reasonable time, the action may be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(3) After a verdict is rendered or an order for judgment is made in any action, such action shall not abate by the death of any party, but the case shall proceed thereafter in the same manner as in cases where the cause of action survives by law, and substitution of parties shall be allowed as in other cases.

History: En. Sec. 25, Ch. 13, L. 1961.

Cross-References

Death of party after verdict, no lien, 25-9-103.

Rule 25(b). Incompetency. If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against his guardian or may appoint a guardian ad litem for that purpose.

History: En. Sec. 25, Ch. 13, L. 1961.

Cross-References

Guardian ad litem, Title 25, ch. 5, part 3.

Infants or incompetent persons, Rule 17(c), M.R.Civ.P.

Guardians of incapacitated persons, Title 72, ch. 5, part 3.

Rule 25(c). Transfer of interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

History: **En. Sec. 25, Ch. 13, L. 1961.**

Cross-References

Right to bring action or assert defense, Title 27, ch. 1, part 5.

Rule 25(d). Public officers — death or separation from office. (1) When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer sues or is sued in his official capacity, he may be described as a party by his official title rather than by name; but the court may require his name to be added.

History: **En. Sec. 25, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.**

V. Depositions and Discovery

Rule 26. General provisions governing discovery

Rule 26(a). Discovery methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

History: **En. Sec. 26, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.**

Rule 26(b). Discovery scope and limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

(2) Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial preparation: Materials. Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C) of this rule, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this rule; and (ii) with respect to discovery obtained under subdivision (b)(4)(A)(ii) of this rule the court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

History: En. Sec. 26, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References

Privileges, Title 26, ch. 1, part 8.

Rule 26(c). Protective orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

History: En. Sec. 26, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Cross-References

Private writings, 30-13-136.

Rule 26(d). Sequence and timing of discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

History: En. Sec. 26, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Rule 26(e). Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (A) he knows that the response was incorrect when made, or (B) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

History: En. Sec. 26, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Cross-References

Supplemental pleadings, Rule 15(d), M.R.Civ.P.

Rule 26(f). Discovery conference. At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

(1) A statement of the issues as they then appear;

(2) A proposed plan and schedule of discovery;

(3) Any limitations proposed to be placed on discovery;

(4) Any other proposed orders with respect to discovery; and

(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Each party and his attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 16.

History: **En. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.**

Rule 26(g). Signing of discovery requests, responses, and objections. Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state his address. The signature of the attorney or party constitutes a certification that he has read the request, response, or objection, and that to the best of his knowledge, information, and belief formed after a reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

History: **En. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.**

Rule 27. Depositions before action or pending appeal

Rule 27(a). Before action. (1) Petition. A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in any district court of the state of Montana may file a verified petition in the district court in the county of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: 1, that the petitioner expects to be a party to an action cognizable in a district court of the state of Montana but is presently unable to bring it or cause it to be brought, 2, the subject matter of the expected action and his interest therein, 3, the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it, 4, the names or a description of the persons he expects will be adverse parties and their addresses so far as known, and 5, the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for an order described in the petition. At least 20 days before the date of hearing the notice shall be served in the manner provided in Rule 4, and for persons not personally served in the manner provided in Rule 4D, who do not appear, an attorney shall be appointed who shall represent them and cross-examine the deponent. If an expected adverse party is a minor or incompetent the provisions of Rule 17(c) apply.

(3) Order and examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules; and the court may make orders of the character provided for by Rules 34 and 35. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) Use of deposition. If a deposition to perpetuate testimony is taken under these rules it may be used in any action involving the same subject matter subsequently brought in a district court of the state of Montana in accordance with the provisions of Rule 32(a).

History: En. Sec. 27, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Rule 27(b). Pending appeal. If an appeal has been taken from a judgment of a district court or before the taking of an appeal if the time therefor has not expired, the district court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the district court. In such case the party who desires to perpetuate the testimony may make a motion in the district court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the district court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the district court.

History: En. Sec. 27, Ch. 13, L. 1961.

Cross-References

Time for filing notice of appeal, Rule 5, M.R.App.P. (see Title 25, ch. 21).

Rule 27(c). Perpetuation by petition. This rule does not limit the power of a court to entertain a proceeding to perpetuate testimony.

History: **En. Sec. 27, Ch. 13, L. 1961.**

Rule 28. Persons before whom depositions may be taken

Rule 28(a). Within the United States. Within the state of Montana, depositions shall be taken before a person authorized by the laws of this state to administer oaths; without the state, but within the United States, or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before a person authorized to administer oaths by the laws of this state, the United States, or of the place where the examination is held; within or without the state of Montana, depositions may also be taken before a person appointed by the court in which the action is pending, which persons so appointed shall have the power to administer oaths and take testimony.

History: **En. Sec. 28, Ch. 13, L. 1961.**

Cross-References

Officers who may administer oaths, 1-6-101.

Rule 28(b). In foreign countries. In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony, or (3) pursuant to letter rogatory. A commission or a letter rogatory shall be issued on application and notice, and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name the country]." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

History: **En. Sec. 28, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.**

Cross-References

Officers who may administer oaths, 1-6-101.

Affidavits made in other states — before whom taken, 26-1-1004.

Rule 28(c). Disqualification for interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

History: **En. Sec. 28, Ch. 13, L. 1961.**

Rule 28(d). Depositions to be used in other states. Whenever the deposition of any person is to be taken in this state pursuant to the laws of another state or the United States or of another country for use in proceedings there, the district court of the county where the witness is to be served, upon proof that notice has been duly served, may issue, pursuant to Rule 45(d), the necessary subpoenas.

History: En. Sec. 28, Ch. 13, L. 1961.

Rule 28(e). Deposition to be taken in sister states and foreign countries for use in this state. Whenever the deposition of any person is to be taken in a sister state or a foreign country, or any other jurisdiction, foreign or domestic, for use in this state, pursuant either to notice or stipulation, the clerk or equivalent officer of any court having jurisdiction at the place where the witness is to be served or the deposition taken, upon proof that notice has been duly served for taking of the deposition or that the parties have stipulated to such taking, may issue the necessary subpoenas or equivalent court instruments to require such witness to attend for the taking of the deposition at the time and place in the sister state or foreign country, or any other jurisdiction, foreign or domestic, designated in the notice or stipulation.

History: En. Sup. Ct. Ord. 10750-8, Sept. 10, 1968, eff. Jan. 1, 1969.

Cross-References

Effect of judicial record of another state, 26-3-203.

Rule 29. Stipulations regarding discovery procedure. Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery.

History: En. Sec. 29, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Rule 30. Depositions upon oral examination

Cross-References

Securing testimony of witness who is a prisoner, Title 26, ch. 2, part 2.

Duties of witnesses, Title 26, ch. 2, part 3.

Protection of witnesses, Title 26, ch. 2, part 4.

Depositions in criminal proceedings, Title 46, ch. 15, part 2.

Rule 30(a). When depositions may be taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4D, except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b)(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

History: En. Sec. 30, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References

Deposition of witness upon postponement, 25-4-504.

Rule 30(b). Notice of examination; general requirements — special notice — nonstenographic recording — production of documents and things — deposition of organization — deposition by telephone. (1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the district where the action is pending and more than 100 miles from the place of trial, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless his deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

If a party shows that when he was served with notice under this subdivision (b)(2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The court may upon motion order that the testimony at a deposition be recorded by other than stenographic, audio-visual, or tape recorded means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at his own expense.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so

designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone. For the purposes of this rule and Rules 28(a), 37(a)(1), 37(b)(1) and 45(d), a deposition taken by telephone is taken in the district and at the place where the deponent is to answer questions propounded to him.

History: En. Sec. 30, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References

Subpoena for taking depositions, Rule 45(d), M.R.Civ.P.

Subpoenas, Title 26, ch. 2, part 1.

Rule 30(c). Examination and cross-examination — record of examination — oath — objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Rules 607, 611(b) and 611(c), Montana Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed.

All objections made at time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

History: En. Sec. 30, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References

Officers who may administer oaths, 1-6-101.

Rule 30(d). Motion to terminate or limit examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

History: En. Sec. 30, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Rule 30(e). Submission to witness — changes — signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

History: En. Sec. 30, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Rule 30(f). Certification and filing by officer — exhibits — copies — notice of filing. (1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly file it with the court in which the action is pending or send it by registered or certified mail to the clerk thereof for filing.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to the deposition, and may be inspected and copied by any party, except that if the person producing the materials desires to retain them he may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if he affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

History: En. Sec. 30, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References

Authentication and identification, Rule 901, Montana Rules of Evidence (see Title 26, ch. 10).

Admissibility of duplicates, copies of certain entries, Rule 1003, Montana Rules of Evidence (see Title 26, ch. 10).

Rule 30(g). Failure to attend or to serve subpoena — expenses. (1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

History: En. Sec. 30, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Cross-References

Attorney's fees as costs, Title 25, ch. 10, part 3.

Subpoena for taking depositions, Rule 45(d), M.R.Civ.P.

Rule 30(h). Audio-visual and tape recorded depositions. (1) (a) Any deposition may be recorded by audio-visual or tape recorded means without a stenographic record. Any party may make at his own expense a simultaneous stenographic, audio record or tape recording of the deposition. Upon his request and at his own expense, any party is entitled to an audio-visual or tape recorded copy of the deposition.

(b) If a deposition is taken by means of an audio-visual or tape recording, such recording is an official record of the deposition. A transcript prepared by any court reporter is also an official record of the deposition.

(c) On motion the court, for good cause, may order the party taking, or who took, a deposition by audio-visual or by tape recording to furnish, at his expense, a transcript of the deposition.

(2) An audio-visual or tape recorded deposition may be used for any purpose and under any circumstances in which a stenographic deposition may be used.

(3) The notice for taking an audio-visual or tape recorded deposition and the subpoena for attendance at that deposition must specify the means, either audio-visual or tape recording, by which the deposition will be taken.

(4) The following procedure must be observed in recording an audio-visual or tape recorded deposition:

(a) The deposition must begin with an oral or written statement on tape or camera which includes:

(i) the operator's name and business address;
(ii) the name and business address of the operator's employer;
(iii) the date, time and place of deposition;
(iv) the caption of the case;
(v) the name of the witness;

(vi) the party on whose behalf the deposition is being taken; and

(vii) any stipulation by the parties.

(b) Counsel shall identify themselves on camera or on tape.

(c) The oath must be administered to the witness on camera or on tape.

(d) If the length of a deposition requires the use of more than one recording unit, the end of each unit and the beginning of each succeeding unit must be announced on camera or on tape.

(e) At the conclusion of a deposition, a statement must be made on camera or on tape that the deposition is concluded. A statement may be made on camera or on tape setting forth any stipulation made by counsel concerning the custody of the audio-visual or the tape recording and exhibits or other pertinent matters.

(f) Depositions must be indexed by a time generator or other adequate indexing device.

(g) An objection must be made as in the case of stenographic depositions.

(h) If the court issues an editing order, the original audio-visual or tape recording must not be altered.

(i) Unless otherwise stipulated by the parties, the original audio-visual or tape recording of a deposition, any copy edited pursuant to an order of the court, and exhibits must be filed forthwith with the clerk of court.

(5) The reasonable expense of recording, editing, and using an audio-visual or tape recorded deposition may be taxed as costs as provided by law.

History: En. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Rule 31. Depositions upon written questions

Rule 31(a). Serving questions — notice. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

History: En. Sec. 31, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Cross-References

Enlargement of time, Rule 6(b), M.R.Civ.P.

Subpoenas, Title 26, ch. 2, part 1.

Rule 31(b). Officer to take responses and prepare record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

History: En. Sec. 31, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Rule 31(c). Notice of filing. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

History: En. Sec. 31, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Rule 32. Use of depositions in court proceedings

Rule 32(a). Use of depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness or for any other purpose permitted by the Montana Rules of Evidence.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; or (B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Montana Rules of Evidence.

History: En. Sec. 32, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Rule 32(b). Objections to admissibility. Subject to the provisions of Rule 28(b) and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

History: En. Sec. 32, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Rule 32(c). Deleted. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

History: En. Sec. 32, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Rule 32(d). Effect of errors and irregularities in depositions. (1) As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to disqualification of officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to taking of deposition. (A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

History: En. Sec. 32, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Rule 33. Interrogatories to parties

Rule 33(a). Availability — procedures for use. Any party may serve upon any other party written interrogatories to be answered by the parties served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. A party serving interrogatories upon an adverse party shall file the same in the court in which the action is pending.

Each interrogatory shall be answered separately and fully in writing under oath unless it is objected to in which event the reasons for objection shall be stated in lieu of an answer. The party answering the interrogatories shall set forth a verbatim recopy of each of the interrogatories, followed by the answer thereto, and shall file the answers in the court in which the action is pending. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

History: En. Sec. 33, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750, Nov. 28, 1966, eff. Jan. 1, 1967; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Rule 33(b). Scope — use at trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

History: En. Sec. 33, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750, Nov. 28, 1966, eff. Jan. 1, 1967; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Cross-References

Montana Rules of Evidence, Title 26, ch. 10.

Rule 33(c). Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and identify, as readily as can the party served, the records from which the answer may be ascertained.

History: En. Sec. 33, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750, Nov. 28, 1966, eff. Jan. 1, 1967; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Rule 34. Production of documents and things and entry upon land for inspection and other purposes

Rule 34(a). Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

History: En. Sec. 34, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Rule 34(b). Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

History: En. Sec. 34, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Rule 34(c). Persons not parties. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

History: En. Sec. 34, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Rule 35. Physical and mental examination of persons

Rule 35(a). Order for examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

History: En. Sec. 35, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Rule 35(b). Report of examining physician. (1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnosis and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make a report the court may exclude his testimony if offered at the trial, or may hold him in contempt of court, or both.

(2) Waiver of privilege. Either by (1) requesting and obtaining a report of the examination ordered as provided herein, or by taking the deposition of the examiner, or by (2) commencing an action or asserting a defense which places in issue the mental or physical condition of a party to the action, the party examined or a party to the action waives any privilege he may have in that action or any other action involving the same controversy, regarding the testimony of every person who has treated, prescribed, consulted, or examined or may thereafter treat, consult, prescribe or examine, such party in respect to the same mental or physical condition; but such waiver shall not apply to any treatment, consultation, prescription or examination for any mental or physical condition not related to the pending action. Upon motion seasonably made, and upon notice and for good cause shown, the court in which the action is pending, may make an order prohibiting the introduction in evidence of any such portion of the medical record of any person as may not be relevant to the issues in the pending action.

(3) This subdivision also applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician or the taking of a deposition of the physician in accordance with the provisions of any other rule.

History: En. Sec. 35, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-6, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Cross-References

Doctor-patient privilege, 26-1-805.

Speech pathologist, audiologist-client privilege, 26-1-806.

Psychologist-client privilege, 26-1-807.

Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

Rule 36. Requests for admissions

Rule 36(a). Request for admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action, only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answers shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

History: En. Sec. 36, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Rule 36(b). Effect of admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

History: En. Sec. 36, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Cross-References

Procedure when answer admits part of plaintiff's claim, 25-4-601.

Effect of failure to deny averments in pleadings, Rule 8(d), M.R.Civ.P.

Rule 37. Failure to make discovery: sanctions

Rule 37(a). Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate court. An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, to the court in the district where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the district where the deposition is being taken.

(2) Motion. If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) Evasive or incomplete answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of expenses of motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

History: En. Sec. 37, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Cross-References

Attorney's fees as costs, Title 25, ch. 10, part 3.

Rule 37(b). Failure to comply with order. (1) Sanctions by court in district where deposition is taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the district in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by court in which action is pending. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring him to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

History: **En. Sec. 37, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.**

Cross-References

Contempts, Title 3, ch. 1, part 5.

Motion to strike, Rule 12(f), M.R.Civ.P.

Rule 37(c). Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

History: **En. Sec. 37, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.**

Cross-References

Attorney's fees as costs, Title 25, ch. 10, part 3.

Rule 37(d). Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

History: **En. Sec. 37, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.**

Cross-References

Attorney's fees as costs, Title 25, ch. 10, part 3.

Rule 37(g). Failure to participate in the framing of a discovery plan. If a party or his attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by Rule 26(f), the court may, after opportunity for hearing, require such party or his attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

History: En. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References

Costs, Title 25, ch. 10.

VI. Trials

Rule 38. Jury trial of right

Cross-References

Right to trial by jury, Art. II, sec. 26, Mont. Const.

Trials, Title 25, ch. 7.

Rule 38(a). Right reserved. The right of trial by jury as declared by The Constitution of the State of Montana or as given by a statute of the state of Montana shall be preserved to the parties inviolate.

History: En. Sec. 38, Ch. 13, L. 1961.

Cross-References

Right to trial by jury, Art. II, sec. 26, Mont. Const.

Trials, Title 25, ch. 7.

Right to jury trial in Municipal Courts, 25-30-105.

Right to jury trial in Justice's Court, 25-31-803.

Right to jury trial in criminal proceedings in District Court, 46-16-102.

Rule 38(b). Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party.

History: En. Sec. 38, Ch. 13, L. 1961.

Rule 38(c). [Demand] — specification of issues. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

History: En. Sec. 38, Ch. 13, L. 1961.

Cross-References

Issues defined — types, 25-7-101.

Rule 38(d). Waiver. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury. A waiver of trial by jury is not revoked by an amendment of a pleading asserting only a claim or defense arising out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

History: **En. Sec. 38, Ch. 13, L. 1961.**

Rule 39. Trial by jury or by the court

Cross-References

Province of court and jury, Title 26, ch. 1, part 2.

Rule 39(a). By jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the register of actions as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist.

History: **En. Sec. 39, Ch. 13, L. 1961.**

Cross-References

When issues of fact to be decided by jury, 25-7-103.

Rule 39(b). By the court. Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court upon motion or of its own initiative may on 10 days' notice to the parties order a trial by a jury of any or all issues.

History: **En. Sec. 39, Ch. 13, L. 1961.**

Cross-References

Issues defined — types, 25-7-101.

Rule 39(c). Advisory jury and trial by consent. In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury or, the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

History: **En. Sec. 39, Ch. 13, L. 1961.**

Rule 40. Assignment of cases for trial. The district courts shall provide by rule for the placing of actions upon the trial calendar (1) without request of the parties or (2) upon request of a party and notice to the other parties or (3) in such other manner as the court deem expedient. Precedence shall be given to actions entitled thereto by any statute of the state of Montana.

History: **En. Sec. 40, Ch. 13, L. 1961.**

Cross-References

Rules for courts of record, 3-1-112.

Rule 41. Dismissal of actions

Cross-References

Judgment to be on merits, 25-9-101.

Rule 41(a). Voluntary dismissal — effect thereof. (1) By plaintiff — by stipulation. Subject to the provisions of Rule 23(e), of Rule 66, and of any statute of the state of Montana, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, which ever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice.

(2) By order of court. Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

History: En. Sec. 41, Ch. 13, L. 1961; amd. Sec. 1, Ch. 111, L. 1963; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Rule 41(b). Involuntary dismissal — effect thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or failure to join a party under Rule 19, operates as an adjudication upon the merits.

History: En. Sec. 41, Ch. 13, L. 1961; amd. Sec. 1, Ch. 111, L. 1963; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Rule 41(c). Dismissal of counterclaim, cross-claim, or third-party claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a responsive pleading is served, or, if there is none, before the introduction of evidence at the trial or hearing.

History: En. Sec. 41, Ch. 13, L. 1961; amd. Sec. 1, Ch. 111, L. 1963.

Cross-References

Counterclaim and cross-claim, Title 25, ch. 4, part 4.

Mode of trial of counterclaim, 25-7-104.

Rule 41(d). Costs of previously-dismissed action. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

History: En. Sec. 41, Ch. 13, L. 1961; amd. Sec. 1, Ch. 111, L. 1963.

Cross-References
Costs, Title 25, ch. 10.

Rule 41(e). Failure to serve summons. No action heretofore or hereafter commenced shall be further prosecuted as to any defendant who has not appeared in the action or been served in the action as herein provided within 3 years after the action has been commenced, and no further proceedings shall be had therein, and all actions heretofore or hereafter commenced shall be dismissed by the court in which the same shall have been commenced, on its own motion, or on the motion of any party interested therein, whether named in the complaint as a party or not, unless summons shall have been issued within 1 year, or unless summons issued within one year shall have been served and return made and filed with the clerk of the court within 3 years after the commencement of said action, or unless appearance has been made by the defendant or defendants therein within said 3 years. When more than one defendant has been named in an action, the action may within the discretion of the trial court be further prosecuted against any defendant who has appeared within 3 years, or upon whom summons which has been issued within 1 year has been served and return made and filed with the clerk within 3 years as herein required.

History: En. Sec. 1, Ch. 111, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Cross-References
Statutes of Limitations, Title 27, ch. 2.

Rule 42. Consolidation — separate trials

Rule 42(a). Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

History: En. Sec. 42, Ch. 13, L. 1961.

Rule 42(b). Separate trials. The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

History: En. Sec. 42, Ch. 13, L. 1961.

Cross-References
Multiple claims or defendants — proper place of trial, 25-2-116, 25-2-117.

Rule 43. Evidence

Rule 43(b). Deleted. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

History: En. Sec. 43, Ch. 13, L. 1961.

Rule 43(c). Deleted. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

History: En. Sec. 43, Ch. 13, L. 1961.

Rule 43(d). Affirmation in lieu of oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

History: En. Sec. 43, Ch. 13, L. 1961.

Cross-References

Form of ordinary oath, 1-6-102.

Rule 43(e). Evidence on motions. Except as otherwise provided in Rule 56, when a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

History: En. Sec. 43, Ch. 13, L. 1961.

Rule 43(f). Interpreters. The court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References

Costs, Title 25, ch. 10.

Interpreters to be paid as witnesses, 26-2-504.

Interpreters for the deaf in official proceedings, Title 49, ch. 4, part 5.

Rule 44. Proof of official record

Rule 44(a). Authentication. (1) Domestic. An official record kept within the United States, or any state, district, commonwealth, territory, or insular possession thereof, or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office.

(2) Foreign. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice-consul, or consular agent of the United States, or a diplomatic or consular official of the

foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification.

History: **En. Sec. 44, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.**

Cross-References

Effect of former judgments and orders, Title 26, ch. 3.

Public records and reports as hearsay — exception, Rule 803, Montana Rules of Evidence (see Title 26, ch. 10).

Former testimony as hearsay — exception, Rule 804, Montana Rules of Evidence (see Title 26, ch. 10).

Requirement of authentication or identification, Rule 901, Montana Rules of Evidence (see Title 26, ch. 10).

Self-authentication, Rule 902, Montana Rules of Evidence (see Title 26, ch. 10).

Public records, Rule 1005, Montana Rules of Evidence (see Title 26, ch. 10).

Rule 44(b). Lack of record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

History: **En. Sec. 44, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.**

Cross-References

Absence of public record as hearsay — exception, Rule 803, Montana Rules of Evidence (see Title 26, ch. 10).

Rule 44(c). Other proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

History: **En. Sec. 44, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.**

Cross-References

Effect of former judgments and orders, Title 26, ch. 3.

Public records and reports as hearsay — exception, Rule 803, Montana Rules of Evidence (see Title 26, ch. 10).

Absence of public record as hearsay — exception, Rule 803, Montana Rules of Evidence (see Title 26, ch. 10).

Former testimony as hearsay — exception, Rule 804, Montana Rules of Evidence (see Title 26, ch. 10).

Requirement of authentication or identification, Rule 901, Montana Rules of Evidence (see Title 26, ch. 10).

Self-authentication, Rule 902, Montana Rules of Evidence (see Title 26, ch. 10).

Public records, Rule 1005, Montana Rules of Evidence (see Title 26, ch. 10).

Rule 44.1. Determination of foreign law. A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Montana Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

History: **En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.**

Cross-References

Books containing laws presumed correct, 26-1-603.

Judicial notice of law, Rule 202, Montana Rules of Evidence (see Title 26, ch. 10).

Uniform Transboundary Pollution Reciprocal Access Act, Title 75, ch. 16.

Rule 45. Subpoena

Cross-References

Subpoenas and witnesses, Title 26, ch. 2.

Rule 45(a). For attendance of witnesses — form — issuance. Every subpoena shall be issued by the clerk under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

History: En. Sec. 45, Ch. 13, L. 1961.

Cross-References

Documents requiring seals, 3-1-206.

Issuance of subpoena, 26-2-102.

Rule 45(b). For production of documentary evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents or tangible things.

History: En. Sec. 45, Ch. 13, L. 1961.

Rule 45(c). Service. A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service is made by exhibiting the original and delivering a true copy to the witness personally, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to and from the place designated, and 1 day's attendance there. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance.

History: En. Sec. 45, Ch. 13, L. 1961.

Cross-References

Mileage — allowance, 2-18-503.

Duties of District Court Clerk relating to jurors and witnesses, 3-5-510.

Statement to Board of County Commissioners concerning witnesses, 3-5-512.

Witness fees, Title 26, ch. 2, part 5.

Rule 45(d). Subpoena for taking depositions — place of examinations. (1) Proof of service of a notice to take a deposition as provided in Rules 30(b) and 31(a) constitutes a sufficient authorization for the issuance by the clerk of court where the action is pending, or for the district in which the deposition is to be taken of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26(b), but in that event the subpoena will be subject to the provisions of Rule 26(c) and subdivision (b) of this rule.

The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(2) A resident of the state may be required to attend an examination only in the county wherein he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of court. A nonresident of the state may be required to attend in any county of the state wherein he is served with a subpoena or at any other convenient place as is fixed by order of court.

History: En. Sec. 45, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Cross-References

Rules for determining residence, 1-1-215.

Depositions upon oral examination, Rule 30, M.R.Civ.P.

Rule 45(e). Subpoena for a hearing or trial. At the request of any party subpoenas for attendance at a hearing or trial shall be issued as provided by Rule 45(a), and such subpoenas for a hearing or trial in a district court may be served at any place within the state.

History: En. Sec. 45, Ch. 13, L. 1961.

Rule 45(f). Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued.

History: En. Sec. 45, Ch. 13, L. 1961.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Contempts in Justices' Court, Title 3, ch. 10, part 4.

Disobedience — how punished, 26-2-104.

Criminal contempt, 45-7-309.

Rule 46. Exceptions unnecessary. Formal exceptions to rulings, orders, or findings of the court are unnecessary; but for all purposes it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take, or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

History: En. Sec. 46, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

Cross-References

Demurrers, pleas, etc., abolished, Rule 7(c), M.R.Civ.P.

What the court may review on an appeal from a judgment, Rule 2, M.R.App.P. (see Title 25, ch. 21).

Demurrers in Justice's Courts abolished, 25-31-503.

Rule 47. Jurors

Cross-References
Juries and jurors, Title 3, ch. 15.

Rule 47(a). Examination of jurors. The court shall permit the parties or their attorneys to conduct the examination of prospective jurors under its supervision. The court may supplement the examination by such further inquiry as it deems proper. Challenges for cause must be tried by the court. The juror challenged and any other person may be examined as a witness on the trial of the challenge.

History: En. Sec. 47, Ch. 13, L. 1961.

Rule 47(b). Manner of selection and order of examination of jurors. From the entire jury panel, an initial panel of 20 jurors shall be called in the first instance, and before any voir dire examination of the jury shall be had. Examination of all jurors in the initial panel shall be completed by the plaintiff before examination by the defendant. If challenges for cause are allowed, an additional juror shall be called from the entire panel immediately upon the allowance of challenge, and the juror called to replace the juror excused for cause shall take the number of the juror who has been excused, to provide a full initial panel of 20 jurors, whose examination shall be completed before any peremptory challenges are made. When the voir dire examination has been completed, each side shall have four peremptory challenges, and they shall be exercised by the plaintiff first striking one, the defendant than striking one, and so on, until each side has exhausted or waived its right. In event one or more alternate jurors are called, the next jurors remaining in the initial panel, if any, shall be called by the clerk to be the alternate jurors. In event all jurors remaining of original initial panel of 20 jurors, including those substituted for those jurors excused for cause, have been subjected to peremptory challenge, then the clerk shall call additional jurors from the remainder of the jury panel to provide alternate jurors who will be subject to challenge as provided by law. In event there is more than one party defendant, and should it appear that each defendant is entitled to peremptory challenges, then the original panel shall be increased to provide four additional jurors for each defendant who is entitled to exercise peremptory challenges. The clerk shall keep a record of the order in which jurors are called, and in event the entire initial panel has not been exhausted by challenges, the court shall excuse sufficient of the last called jurors until a jury of 12 persons and the determined number of alternates shall remain to make up the trial jury.

History: En. Sec. 47, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Cross-References
Selection of jury, Title 25, ch. 7, part 2.

Rule 47(c). Alternate jurors. The court may direct that one or two jurors in addition to the regular panel be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury arrives at its verdict, become unable or disqualified to perform their duties. An alternate juror shall not join the jury in its deliberation unless called upon by the court to replace a member of the jury. His conduct during the period in which the jury is considering its verdict shall be regulated by instructions of the trial court. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the principal jurors. An alternate juror who does not replace a principal juror shall be discharged after the jury arrives at its verdict. If one or two alternate jurors are called each party is entitled to one peremptory challenge in addition to those otherwise allowed by subdivision (b) of this rule. The additional peremptory challenge may be used only against an alternate juror, and the other peremptory challenges allowed by law shall not be used against the alternates.

History: En. Sec. 47, Ch. 13, L. 1961.

Cross-References

Procedure when a juror becomes sick, 25-7-304.

Rule 48. Juries — verdict. At least two-thirds in number of any jury may render a verdict or finding, and such verdict or finding so rendered shall have the same force and effect as if all such jury concurred therein. The parties may stipulate that the jury shall consist of less number than 12.

History: En. Sec. 48, Ch. 13, L. 1961.

Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.

Jury defined, 3-15-101.

Number of jurors in a trial jury, 3-15-106.

Conduct of jury after case submitted to it, 25-7-403.

Jury's verdict, Title 25, ch. 7, part 5.

Rule 49. Special verdicts and interrogatories

Cross-References

Jury's verdict, Title 25, ch. 7, part 5.

Rule 49(a). Special verdicts. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

History: En. Sec. 49, Ch. 13, L. 1961.

Rule 49(b). General verdict accompanied by answer to interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the court shall direct the entry of the appropriate judgment upon the verdict and answers. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict or may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, the court shall not direct the entry of judgment but may return the jury for further consideration of its answers and verdict or may order a new trial.

History: En. Sec. 49, Ch. 13, L. 1961.

Rule 50. Motion for a directed verdict and for judgment notwithstanding the verdict

Cross-References

Pleadings, motions, and other papers, Title 25, ch. 4.

Rule 50(a). Motion for directed verdict — when made, effect. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

History: En. Sec. 50, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References

Evidence on motions, Rule 43(e), M.R.Civ.P.

Rule 50(b). Motion for judgment notwithstanding the verdict. Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later than 10 days after service of notice of entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within 10 days after the jury has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

Motions provided by this subdivision shall be heard and determined within the times provided by Rule 59 for the hearing and determination of motions for new trial.

History: En. Sec. 50, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Cross-References
New trial, Title 25, ch. 11.

Rule 50(c). Motion for judgment notwithstanding the verdict — conditional rulings on grant of motion. (1) If the motion for judgment notwithstanding the verdict, provided for in subdivision (b) of this rule, is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the supreme court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the respondent on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the supreme court.

(2) The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial pursuant to Rule 59 not later than 10 days after service of notice of entry of the judgment notwithstanding the verdict.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References
New trial, Title 25, ch. 11.

Rule 50(d). Motion for judgment notwithstanding the verdict — denial of motion. If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, as respondent, assert grounds entitling him to a new trial in the event the supreme court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the supreme court reverses the judgment, nothing in this rule precludes it from determining that the respondent is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References
New trial, Title 25, ch. 11.

Rule 51. Instructions to jury — objection. The court may, during the trial or at the close of the evidence, request each of the parties to submit proposed written instructions on the law of the case. No party may assign as error the failure to instruct on any point of law unless he offers an instruction thereon. The court shall rule upon the proposed instructions and may prepare other written instructions to be given of its own motion and shall submit to the parties the instructions that will be given and provide opportunity to make objections. Objections made shall specify and state the particular grounds on which the instruction is objected to and it shall not be sufficient in stating the ground of such objection to state generally the instruction does not state the law or is against the law, but such ground of objection shall specify particularly wherein the instruction is insufficient or does not state the law, or what particular clause therein is objected to. All objections and rulings thereon shall be made out of the presence of the jury. No exceptions are necessary to the rulings of the court on the giving or the refusal of instructions. The court shall read to the jury the instructions given before the arguments of counsel are commenced.

History: En. Sec. 51, Ch. 13, L. 1961.

Cross-References

Admonition when jury permitted to separate, 25-7-402.

Conduct of jury after case submitted to it, 25-7-403.

Papers which may be taken into jury room, 25-7-404.

Jury's request for further information, 25-7-405.

Rule 52. Findings by the court

Rule 52(a). Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b). However, any order of the court granting a motion under Rules 12 or 56 which is appealable to an appellate court shall specify the grounds therefor with sufficient particularity as to apprise the parties and the appellate court of the rationale underlying the ruling and this may be done in the body of the order or in an attached opinion. The court may require any party to submit proposed findings of fact and conclusions of law for the court's consideration and the court may adopt any such proposed findings or conclusions so long as they are supported by the evidence and law of the case.

History: En. Sec. 52, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References

Trial by the court, Title 25, ch. 7, part 6.

Questions of fact, 26-1-202.

Contents and filing of restraining order granted without notice, 27-19-316.

Rule 52(b). Amendment. Upon motion of a party made not later than 10 days after notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

History: En. Sec. 52, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Aug. 1, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

Cross-References

Effect in time for appeal, Rule 5, M.R.App.P. (see Title 25, ch. 21).

Rule 52(c). Time for determining motions. Motions provided under subdivision (b) of this rule shall be determined within the time provided by Rule 59 in the cases of motions for new trial and amendment of judgment and if the court shall fail to rule on the motion within the 45 day period, the motion shall be deemed denied.

History: En. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Rule 53. Masters

Cross-References

Referees, Title 25, ch. 7, part 7.

Water Masters, Title 3, ch. 7, part 3.

Rule 53(a). Appointment and compensation. Each district court with the concurrence of a majority of all the judges thereof may appoint one or more standing masters for its district, and the court in which any action is pending may appoint a special master therein. As used in these rules the word "master" includes a referee, an auditor, an examiner, and an assessor. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

History: En. Sec. 53, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References

Execution of judgment, Title 25, ch. 13.

Rule 53(b). Reference. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it.

History: En. Sec. 53, Ch. 13, L. 1961.

Cross-References

Pleading an account, 25-4-302.

Rule 53(c). Powers. The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in the Montana Rules of Evidence for a court sitting without a jury.

History: En. Sec. 53, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References

Form of ordinary oath, 1-6-102.

Rule 53(d). Proceedings. (1) Meetings. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the master may proceed ex parte, or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) Witnesses. The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, he may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.

(3) Statement of accounts. When matters of accounting are in issue before the master, he may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as he directs.

History: En. Sec. 53, Ch. 13, L. 1961.

Cross-References
Contempts, Title 3, ch. 1, part 5.
Pleading an account, 25-4-302.
Subpoenas and witnesses, Title 26, ch. 2.

Rule 53(e). Report. (1) Contents and filing. The master shall prepare a report upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

(2) In nonjury actions. In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(d). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) In jury actions. In an action to be tried by a jury the master shall not be directed to report the evidence. His findings upon the issues submitted to him are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(4) Stipulations as to findings. The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) Draft report. Before filing his report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

History: En. Sec. 53, Ch. 13, L. 1961.

VII. Judgment

Part Cross-References
Power of court to compel obedience, 3-1-111.
Disobedience of judgment as contempt, 3-1-501, 3-10-401, 3-11-303.
Judgment in contempt cases final, 3-1-523.
Territorial extent, 3-5-312.
Judgment book, 3-5-507.
Illegality of confession of judgment in contract, 28-2-709.

Rule 54. Judgments — costs

Cross-References
Judgments, Title 25, ch. 9.
Costs, Title 25, ch. 10.
Effect of former judgments and orders, Title 26, ch. 3.

Rule 54(a). Definition — form. A judgment is the final determination of the rights of the parties in an action or proceeding and as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

History: En. Sec. 54, Ch. 13, L. 1961.

Cross-References

From what judgment or order an appeal may be taken, Rule 1, M.R.App.P. (see Title 25, ch. 21).

What the court may review on an appeal from a judgment, Rule 2, M.R.App.P. (see Title 25, ch. 21).

Rule 54(b). Judgment upon multiple claims or involving multiple parties. When multiple claims for relief or multiple parties are involved in an action, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

History: En. Sec. 54, Ch. 13, L. 1961.

Cross-References

Whose rights determined by judgment, 25-9-201.

Rule 54(c). Demand for judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

History: En. Sec. 54, Ch. 13, L. 1961.

Rule 54(d). Costs. Except when express provision therefor is made either in a statute of the state of Montana or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the state of Montana, its officers, agencies, and political subdivisions shall be imposed only to the extent permitted by law.

History: En. Sec. 54, Ch. 13, L. 1961.

Cross-References

Governmental entities not required to give security, 25-1-402.

Allowable costs, Title 25, ch. 10, part 2.

Payment of costs by governmental entities, Title 25, ch. 10, part 7.

Costs on appeal, Rule 33, M.R.App.P. (see Title 25, ch. 21).

Costs in quo warranto proceedings, 27-28-205.

Forcible entry and unlawful detainer, Title 70, ch. 27.

Quieting title to real property, Title 70, ch. 28.

Costs on foreclosure of lien, 71-3-124.

Rule 55. Default

Cross-References

Judgment to be on the merits, 25-9-101.

Rule 55(a). Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

History: En. Sec. 55, Ch. 13, L. 1961.

Cross-References

Collection of Clerk's and Sheriff's costs after judgment, 25-10-406.

Clerk to include costs in judgment, 25-10-504.

Affidavits, Title 26, ch. 1, part 10.

Rule 55(b). Judgment. Judgment by default may be entered as follows:

(1) By the clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if he has been defaulted for failure to appear and if he is not an infant or incompetent person, and has been personally served. No judgment by default shall be entered by the clerk when service has been by publication.

(2) By the court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative, or guardian ad litem, who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the state of Montana.

History: En. Sec. 55, Ch. 13, L. 1961; amd. Sup. Ct. Ord. June 1, 1964, eff. July 1, 1964; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References

Powers of judges at chambers, 3-5-311.

Rule 55(c). Default — setting aside — extension of time by court or stipulation of parties. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b). No default of any party shall be entered, and no default judgment shall be entered against any party, except upon application of the opposing party. Any stipulation for extension of time between the parties or their counsel, whether in writing or made verbally before the court, shall be effective to extend the time for serving and/or filing any appearance, motion, pleading or proceeding, according to the terms of such stipulation. In any case if a party in default shall serve and file his appearance, motion, pleading or proceeding prior to application to the clerk for default, then such defaulting party shall not thereafter be considered in default as to that particular appearance, motion, pleading, or proceeding.

History: En. Sec. 55, Ch. 13, L. 1961; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References

Extension of time, 25-1-301.

Notice requirements after appearance of defendant, 25-3-401.

Rule 55(d). Plaintiffs, counterclaimants, cross-claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

History: **En. Sec. 55, Ch. 13, L. 1961.**

Rule 56. Summary judgment

Rule 56(a). For claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

History: **En. Sec. 56, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.**

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Uniform Declaratory Judgments Act, Title 27, ch. 8.

Rule 56(b). For defending party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

History: **En. Sec. 56, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.**

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Uniform Declaratory Judgments Act, Title 27, ch. 8.

Rule 56(c). Motion and proceedings thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

History: **En. Sec. 56, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.**

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Rule 56(d). Case not fully adjudicated on motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

History: En. Sec. 56, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Rule 56(e). Form of affidavits — further testimony — defense required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

History: En. Sec. 56, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Cross-References

Evidence on motions, Rule 43(e), M.R.Civ.P.

Affidavits, Title 26, ch. 1, part 10.

Competency in general; disqualification, Rule 601, Montana Rules of Evidence (see Title 26, ch. 10).

Rule 56(f). When affidavits are unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

History: En. Sec. 56, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Cross-References

Motion to postpone trial for absence of testimony, 25-4-501.

Evidence on motions, Rule 43(e), M.R.Civ.P.

Affidavits, Title 26, ch. 1, part 10.

Rule 56(g). Affidavits made in bad faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

History: En. Sec. 56, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Costs, Title 25, ch. 10.

Rule 57. Declaratory judgments. The procedure for obtaining a declaratory judgment pursuant to Title 27, chapter 8, Montana Code Annotated, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in

Rules 38 and 39, subject to the provisions of section 27-8-302, Montana Code Annotated. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

History: **En. Sec. 57, Ch. 13, L. 1961.**

Cross-References

Right to trial by jury, Art. II, sec. 26, Mont. Const.

Rule 58. Entry of judgment. Unless the court otherwise directs and subject to the provisions of Rule 54(b), judgment upon the verdict of a jury shall be entered forthwith by the clerk; but the court shall direct the appropriate judgment to be entered upon a special verdict or upon a general verdict accompanied by answers to interrogatories returned by a jury pursuant to Rule 49. When the court directs that a party recover only money or costs or that all relief be denied, the clerk shall enter judgment forthwith upon receipt by him of the direction; but when the court directs entry of judgment for other relief, the judge shall promptly settle or approve the form of the judgment and direct that it be entered by the clerk. The entry of the judgment shall not be delayed for the taxing of costs.

History: **En. Sec. 58, Ch. 13, L. 1961.**

Cross-References

General duties of clerk, 3-5-501.

Judgment book, 3-5-507.

Entry of judgment and satisfaction — lien, Title 25, ch. 9, part 3.

Imposition of costs, Title 25, ch. 10, part 1.

Rule 59. New trials — amendment of judgment

Rule 59(a). Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues for any of the reasons provided by the statutes of the state of Montana.

A motion for new trial shall state with particularity the grounds therefor, it not being sufficient merely to set forth the statutory grounds, but the motion may be amended, upon reasonable notice, up to and including the time of hearing the motion.

On motion for a new trial in an action tried without a jury, the court may take additional testimony, amend the findings of fact and conclusions of law or make new findings and conclusions, set aside, vacate, modify or confirm any judgment that may have been entered or direct the entry of a new judgment.

History: **En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.**

Cross-References

Grounds for new trial, 25-11-102.

Grounds after trial by the court, 25-11-103.

Rule 59(b). Time for motion. A motion for a new trial shall be served not later than 10 days after service of notice of the entry of the judgment.

History: **En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.**

Cross-References

How motion for new trial made, 25-11-104.

Rule 59(c). Time for serving affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which periods may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

History: En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Cross-References

How motion for new trial made, 25-11-104.

Evidence on motions, Rule 43(e), M.R.Civ.P.

Affidavits, Title 26, ch. 1, part 10.

Rule 59(d). Time for ruling on motion. If the court shall fail to rule on a motion for new trial within 45 days from the time the motion is filed, the motion shall, at the expiration of said period, be deemed denied.

The decision on the motion may be entered in the minutes of the court, or may be made in writing in chambers or in any county in the state where the judge may be, and be filed with the clerk of court in the county where the action is pending. Upon the hearing, reference may be had in all cases to the pleadings and the orders of the court on file, and reference may also be had to any depositions and documentary evidence offered on the trial, and to the proceedings on the trial and, when necessary, reference may be had to the notes of the court reporter.

History: En. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References

How motion for new trial made, 25-11-104.

Rule 59(e). On initiative of court. Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion.

History: En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Cross-References

Entry of judgment and satisfaction — lien, Title 25, ch. 9, part 3.

Grounds for new trial, 25-11-102.

Rule 59(f). Order granting new trial. Any order of the court granting a new trial, shall specify the grounds therefor with sufficient particularity as to apprise the parties and the appellate court of the rationale underlying the ruling, and this may be done in the body of the order, or in an attached opinion.

History: En. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976.

Cross-References

Costs of appeal from order of new trial discretionary with court, 25-10-104.

Grounds for new trial, 25-11-102.

Grounds for appeal, Rule 1, M.R.App.P. (see Title 25, ch. 21).

Rule 59(g). Motion to alter or amend a judgment. A motion to alter or amend the judgment shall be served not later than 10 days after the service of the notice of the entry of the judgment, and may be combined with the motion for a new trial herein provided for. This motion shall be determined within the time provided hereinabove with respect to a motion for a new trial and if the court shall fail to rule on the motion within the 45 day period, the motion shall be deemed denied.

History: En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Sept. 7 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969; amd. and redes. Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Rule 60. Relief from judgment or order

Rule 60(a). Clerical mistakes. Clerical mistakes in judgments, orders or other parts of the record, and in pleadings, and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

History: En. Sec. 60, Ch. 13, L. 1961.

Cross-References

Papers with technical defects, 25-4-112.

Effect of errors and irregularities in depositions, Rule 32(d), M.R.Civ.P.

Rule 60(b). Mistakes — inadvertence — excusable neglect — newly discovered evidence — fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) when a defendant has been personally served, whether in lieu of publication or not, not more than 60 days after the judgment, order or proceeding was entered or taken, or, in a case where notice of entry of judgment is required by Rule 77(d), not more than 60 days after service of notice of entry of judgment. When from any cause the summons in an action has not been personally served on the defendant, the court may allow, on such terms as may be just, such defendant or his legal representative, at any time within 180 days after the rendition of any judgment in such action, to answer to the merits of the original action. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as may be required by law, or to set aside a judgment for fraud upon the court.

History: En. Sec. 60, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Aug. 1, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References

Fraud and mistake, Title 28, ch. 2, part 4.

Rule 60(c). Time for determining motions. Motions provided by subdivision (b) of this rule shall be determined within the times provided by Rule 59 in the case of motions for new trials and amendment of judgment and if the court shall fail to rule on the motion within the 45 day period, the motion shall be deemed denied.

History: En. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Rule 61. Harmless error. No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

History: En. Sec. 61, Ch. 13, L. 1961.

Cross-References

Papers with technical defects, 25-4-112.

Rulings on evidence, Rule 103, Montana Rules of Evidence (see Title 26, ch. 10).

Rule 62. Stay of proceedings to enforce a judgment

Cross-References

Execution of judgment, Title 25, ch. 13.

Stay of judgment or order pending appeal, Rule 7, M.R.App.P. (see Title 25, ch. 21).

Rule 62(a). Superseded. M.R.App.P., Rule 7.

History: En. Sec. 62, Ch. 13, L. 1961.

Rule 62(b). Stay on motion for new trial or for judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the district court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

History: En. Sec. 62, Ch. 13, L. 1961.

Cross-References

Security for damages, 27-19-306.

Rule 62(c). Injunction pending appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the district court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

History: En. Sec. 62, Ch. 13, L. 1961.

Cross-References

Appeals from injunction orders, Rule 40, M.R.App.P. (see Title 25, ch. 21).

Injunctions, Title 27, ch. 19.

Rule 62(d). Superseded. M.R.App.P., Rule 7.
History: En. Sec. 62, Ch. 13, L. 1961.

Rule 62(e). Stay in favor of the state of Montana or agency thereof. When an appeal is taken by the state of Montana or an officer or agency or governmental subdivision thereof, and the operation or enforcement of the judgment is stayed, no security shall be required from the appellant. In all cases, the parties may by written stipulation waive the filing of security.
History: En. Sec. 62, Ch. 13, L. 1961.

Cross-References
Governmental entities not required to give security, 25-1-402.
Security for damages, 27-19-306.

Rule 62(g). Power of appellate court not limited. The provisions in this rule do not limit any power of the supreme court of the state of Montana or of a justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.
History: En. Sec. 62, Ch. 13, L. 1961.

Cross-References
Injunctions by Supreme Court, 3-2-205.

Rule 62(h). Stay of judgment upon multiple claims. When a court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.
History: En. Sec. 62, Ch. 13, L. 1961.

VIII. Provisional and Final Remedies and Special Proceedings

Rule 64. Seizure of person or property. At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by law.
History: En. Sec. 63, Ch. 13, L. 1961.

Cross-References
Execution of judgment, Title 25, ch. 13.
Proceedings in aid of execution, Title 25, ch. 14.
Arrest and bail in civil actions, Title 27, ch. 16.
Prejudgment attachment, Title 27, ch. 18.
Injunctions, Title 27, ch. 19.

Rule 65. Injunctions. The procedure for granting restraining orders and temporary and permanent injunctions shall be as provided by statute.
History: En. Sec. 64, Ch. 13, L. 1961.

Cross-References
Calendar, Rule 39, M.R.App.P. (see Title 25, ch. 21).
Appeals from injunction orders, Rule 40, M.R.App.P. (see Title 25, ch. 21).
Injunctions, Title 27, ch. 19.

Rule 66. Receivers. An action wherein a receiver has been appointed shall not be dismissed except by order of the court. The practice in the appointment of and administration of estates by receivers or other similar officers shall be in accordance with the Montana statutes and with the practice heretofore followed in the courts of this state. In all other respects, the action in which the appointment of the receiver is sought or which is brought by or against a receiver is governed by these rules.

History: En. Sec. 65, Ch. 13, L. 1961.

Cross-References

Appointing a receiver, Title 25, ch. 14, part 2.

Receivers, Title 27, ch. 20.

Rule 67. Deposit in court. In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing. Money paid into court under this rule shall be deposited and withdrawn in accordance with the provisions of chapter 8, Title 25, Montana Code Annotated.

History: En. Sec. 66, Ch. 13, L. 1961.

Rule 68. Offer of judgment. At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon judgment shall be entered. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

History: En. Sec. 67, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References

Costs, Title 25, ch. 10.

Summary judgment on liability, Rule 56(c), M.R.Civ.P.

Compromise and offers to compromise, Rule 408, Montana Rules of Evidence (see Title 26, ch. 10).

Rule 69. Execution. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of and supplementary to execution shall be in accordance with the statutes of the state of Montana. In aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for taking depositions.

History: En. Sec. 68, Ch. 13, L. 1961.

Cross-References

Execution of judgment, Title 25, ch. 13.

Proceedings in aid of execution, Title 25, ch. 14.

Depositions upon oral examination, Rule 30, M.R.Civ.P.

Depositions upon written questions, Rule 31, M.R.Civ.P.

Rule 70. Judgment for specific acts — vesting title. If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the court may order the clerk to issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the state, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

History: En. Sec. 69, Ch. 13, L. 1961.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Enforcement of court's order, 25-8-102.

Method of enforcement, Title 25, ch. 13, part 2.

Contents of Writ of Execution, Title 25, ch. 13, part 3.

Rule 71. Process in behalf of and against persons not parties. When an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order by the same process as if he were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party.

History: En. Sec. 70, Ch. 13, L. 1961.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Parties plaintiff and defendant, Rule 17, M.R.Civ.P.

IX. Appeals

Rule 72. Appeal from a district court to the supreme court. When an appeal is permitted by law from a district court to the supreme court of Montana, or in any case where original proceedings are commenced in the supreme court, such appeal or original proceeding shall be taken, perfected, and prosecuted pursuant to the provisions of the Montana Rules of Appellate Procedure and controlling statutes to the extent that they are not superseded by the Montana Rules of Appellate Procedure.

History: En. Sec. 71, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Cross-References

Original jurisdiction of Supreme Court, 3-2-202.

Appeal to Supreme Court, Title 25, ch. 12.

Scope of rules — from what judgment or order an appeal may be taken, Rule 1, M.R.App.P. (see Title 25, ch. 21).

Statutes superseded, Rule 53, M.R.App.P. (see Title 25, ch. 21).

X. District Courts and Clerks

Rule 77. District courts and clerks

Rule 77(a). District courts always open. The district courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

History: En. Sec. 72, Ch. 13, L. 1961.

Cross-References

Days on which courts may be held, 3-1-301.

Nonjudicial day, 3-1-302.

Rule 77(b). Trials and hearings — orders in chambers. All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.

History: En. Sec. 72, Ch. 13, L. 1961.

Cross-References

Sittings of court to be public, 3-1-312.

Powers of judge out of court, 3-1-401.

Powers of judge at chambers, 3-5-311.

Terms and location of District Courts, Title 3, ch. 5, part 4.

Venue, Title 25, ch. 2.

Change of venue upon agreement of parties, 25-2-202.

Rule 77(c). Clerk's office and orders by clerk. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but his action may be suspended or altered or rescinded by the court upon cause shown.

History: En. Sec. 72, Ch. 13, L. 1961.

Cross-References

Method of enforcement of judgment, Title 25, ch. 13, part 2.

Rule 77(d). Notice of entry of judgment served. Within 10 days after entry of judgment in an action in which an appearance has been made, notice of such entry, together with a copy of such judgment or general description of the nature and amount of relief and damages thereby granted, shall be served by the prevailing party upon all parties who have made an appearance, but any other party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers.

History: En. Sec. 72, Ch. 13, L. 1961; repealed and replaced by Sup. Ct. Ord. 10750, Dec. 31, 1975, eff. March 1, 1976; amd. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.

Cross-References
Entry of judgment and satisfaction — lien, Title 25, ch. 9, part 3.

Rule 77(e). Transmittal of file on removal. Upon the filing of a copy of the petition for removal of any state district court action to the district court of the United States, district of Montana, and a request in writing therefor, the clerk of such state district court shall promptly deliver to the clerk of court of the district court of the United States, district of Montana, all papers then in the original state court file, or theretofore issued and subsequently filed and shall keep in the state court file only the copy of the petition for removal and such papers as were filed with the request for removal.
History: En. Sup. Ct. Ord. 10750-8, Sept. 10, 1968, eff. Jan. 1, 1969; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

Cross-References
Filing of transcript of docket of federal court, 25-9-303.

Rule 80. Stenographer — stenographic report or transcript as evidence. Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony.
History: En. Sec. 73, Ch. 13, L. 1961.

Cross-References
Copies of proceedings to be furnished by court reporter, 3-5-604.
Reporter's report prima facie evidence, 3-5-612.
Justice's Court records prima facie evidence, 3-10-502.
Proof of official record, Rule 44, M.R.Civ.P.
Impeachment of judicial record, 26-3-105.

XI. General Provisions

Rule 81. Applicability in general

Rule 81(a). Special statutory proceedings. The statutory proceedings listed in Table A and any other special statutory proceeding, whether or not listed in Table A, are excepted from these rules insofar as they are inconsistent or in conflict with the procedure and practice provided by these rules.
History: En. Sec. 74, Ch. 13, L. 1961.

Compiler's Comments
Table A. The Code Commissioner has not reprinted Table A in the MCA because it was never intended to be a complete listing, has not been updated since 1963, contains a high percentage of repealed sections, and is generally obsolete and not very useful. Interested persons may find it in the 1964 main volume of R.C.M. 1947, Vol. 7.

Cross-References
Applicability of M.R.App.P. to special statutory proceedings, Rule 52, M.R.App.P. (see Title 25, ch. 21).

Rule 81(b). Appeals to district courts. These rules do not supersede the provisions of statutes relating to appeals to or review by the district courts, but shall govern procedure and practice relating thereto insofar as these rules are not inconsistent with such statutes.
History: En. Sec. 74, Ch. 13, L. 1961.

Cross-References

Initiating judicial review of contested administrative cases, 2-4-702.

Kinds of District Court jurisdiction, 3-5-301.

Appellate jurisdiction of District Courts, 3-5-303.

M.R.App.P. not to affect appeals to District Court, Rule 52, M.R.App.P. (see Title 25, ch. 21).

Appeals to District Court from Justices' and City Courts, Title 25, ch. 33.

Appeals to District Court from small claims function of Justices' Courts, 25-35-803.

Appeal of criminal cases from Justices' and City Courts, 46-17-311.

Rule 81(c). Rules incorporated into statutes. Where any statute heretofore or hereafter enacted, whether or not applicable to a special statutory proceeding or listed in any table appended hereto, provides that any act in a civil proceeding in a district court shall be done in the manner provided by law or as in a civil action or as provided by any statute superseded by these rules, such act shall be done in accordance with these rules and the procedure thereon shall conform to these rules, insofar as practicable.

History: En. Sec. 74, Ch. 13, L. 1961.

Rule 82. Jurisdiction and venue unaffected. Except as provided in Rule 4 these rules shall not be construed to extend or limit the jurisdiction of the district courts of Montana or the venue of actions therein.

History: En. Sec. 75, Ch. 13, L. 1961.

Cross-References

Jurisdiction of District Courts, Title 3, ch. 5, part 3.

Venue in District Court actions, Title 25, ch. 2.

Rule 83. Rules by district courts. Each district court, upon agreement of the judges or a majority thereof, may from time to time make and amend rules governing its practice not inconsistent with these rules or other rules prescribed by the supreme court. Copies of rules and amendments so made by any district court shall upon their promulgation be furnished to the supreme court of this state. In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules.

History: En. Sec. 76, Ch. 13, L. 1961.

Cross-References

Rules for courts of record, 3-1-112.

Local rules, 3-2-704.

Rule 84. Forms. The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

History: En. Sec. 77, Ch. 13, L. 1961.

Rule 85. Title. These rules shall be known as the Montana Rules of Civil Procedure and may be cited as M.R.Civ.P.

History: En. Sec. 78, Ch. 13, L. 1961.

Rule 86. Effective date — statutes superseded

Rule 86(a). Effective date and application to pending proceedings. These rules became effective January 1, 1962. In accordance with Chapter 16, Laws of 1963, proposed amendments to these rules shall be first prepared by the advisory committee, which shall distribute copies thereof to the bench and resident bar of the state for their consideration and suggestions. Submission of proposed amendments to the court shall be made by the advisory committee only after the advisory committee has considered suggestions received from the bench and bar. Submissions to the court shall be noticed by the court by mailing notice, containing copies of the submitted proposals to all district judges and resident attorneys licensed to practice in the Montana courts as shown by the records of the clerk of the court, and the court will receive written suggestions and objections within the time fixed in the notice, which shall be not less than 90 days thereafter. Oral hearings on proposals will be held only on special order of the court. Amendments adopted by the court will become effective on January 1 unless a different time be fixed in the order.

The court will annually, at least 30 days prior to January 1, cause to be published all amendments to these rules which are to become effective on the succeeding January 1, and transmit the same to all judges and resident lawyers of the state. Such rules as are to become effective at times other than January 1 will be published and transmitted at least 30 days prior to their effective date. These rules and amendments govern all proceedings and actions brought after they take effect, and also all further proceedings in actions then pending, except to the extent that in the opinion of the district court their application in a particular action pending when the rules or amendments take effect would not be feasible, or would work injustice, in which event the procedure existing at the time the action was brought applies.

History: En. Sec. 79, Ch. 13, L. 1961; amd. Sup. Ct. Ord. June 1, 1964, eff. July 1, 1964.

Cross-References

Adoption of Rules of Civil Procedure, Title 3, ch. 2, part 7.

Rule 86(b). Statutes superseded. Upon the taking effect of these rules or amendments thereto all statutes and parts of statutes in conflict therewith and the statutes listed in Tables B and C are superseded in respect of practice and procedure in the district courts.

History: En. Sec. 79, Ch. 13, L. 1961; amd. Sup. Ct. Ord. June 1, 1964, eff. July 1, 1964.

Compiler's Comments

Tables B and C. Tables B and C can be found with the annotations for this rule.

Cross-References

Statutes superseded by M.R.App.P., Rule 53, M.R.App.P. (see Title 25, ch. 21).

Appendix of Forms

Form 1. SUMMONS—OFFICIAL FORM

IN THE DISTRICT COURT OF THE ...... JUDICIAL DISTRICT
OF THE STATE OF MONTANA,
IN AND FOR THE COUNTY OF ....

A.B., Plaintiff
vs. SUMMONS
C.D., Defendant

The State of Montana to the above-named defendant:

You are hereby summoned to answer the complaint in this action which is filed in the office of the clerk of this court, a copy of which is herewith served upon you, and to file your answer and serve a copy thereof upon the plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness my hand and the seal of said court, this .... day of.....
E.F.
Attorney for Plaintiff,
..........................(Address)
...........................Montana.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 2. COMPLAINT ON A PROMISSORY NOTE

1. Defendant on or about June 1, 1958, executed and delivered to plaintiff a promissory note [in the following words and figures: (here set out the note verbatim)]; [a copy of which is hereto annexed as Exhibit A]; [whereby defendant promised to pay to plaintiff or order on June 1, 1959, the sum of .... dollars with interest thereon at the rate of .... per cent per annum].[1]

> [1] The pleader may use the material in one of the three sets of brackets. This choice will depend upon whether he desires to plead the document verbatim, or by exhibit, or according to its legal effect.

2. Defendant owes to plaintiff the amount of said note and interest.

Wherefore plaintiff demands judgment against defendant for the sum of .... dollars, interest, and costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 3. COMPLAINT ON AN ACCOUNT

Defendant owes plaintiff .... dollars according to the account hereto annexed as Exhibit A.

Wherefore plaintiff demands judgment against defendant for the sum of .... dollars, interest, and costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 4. COMPLAINT FOR GOODS SOLD AND DELIVERED

Defendant owes plaintiff .... dollars for goods sold and delivered by plaintiff to defendant between June 1, 1959, and December 1, 1959.

Wherefore plaintiff demands judgment against defendant for the sum of .... dollars, interest, and costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 5. COMPLAINT FOR MONEY LENT

Defendant owes plaintiff .... dollars for money lent by plaintiff to defendant on June 1, 1959, which is now due.

Wherefore plaintiff demands judgment against defendant for the sum of .... dollars, interest, and costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 6. COMPLAINT FOR MONEY PAID BY MISTAKE

Defendant owes plaintiff .... dollars for money paid by plaintiff to defendant by mistake on June 1, 1959, under the following circumstances; (stating the circumstances with particularity. See Rule 9(b)).

Wherefore plaintiff demands judgment against defendant for the sum of .... dollars, interest, and costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 7. COMPLAINT FOR MONEY HAD AND RECEIVED

Defendant owes plaintiff $10,000 for money had and received from one G.H. on June 1, 1959, to be paid by defendant to plaintiff.

Wherefore plaintiff demands judgment against defendant for the sum of $10,000, interest, and costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 8. COMPLAINT FOR NEGLIGENCE

1. On June 1, 1959, in a public highway called State Street, in Helena, Montana, defendant negligently drove a motor vehicle against the plaintiff who was then crossing said highway.
2. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of .... dollars.

Wherefore plaintiff demands judgment against defendant in the sum of .... dollars and costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 9. COMPLAINT FOR NEGLIGENCE WHERE PLAINTIFF IS UNABLE TO DETERMINE DEFINITELY WHETHER THE PERSON RESPONSIBLE IS C.D. or E.F. OR WHETHER BOTH ARE RESPONSIBLE AND WHERE HIS EVIDENCE MAY JUSTIFY A FINDING OF WILLFULNESS OR OF RECKLESSNESS OR OF NEGLIGENCE

1. On June 1, 1959, in a public highway called State Street in Helena, Montana, defendant C.D. or defendant E.F., or both defendants C.D. and E.F. willfully or recklessly or negligently drove or caused to be driven a motor vehicle against the plaintiff who was then crossing said highway.
2. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of .... dollars.

Wherefore plaintiff demands judgment against C.D. or against E.F. or against both in the sum of .... dollars and costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 10. COMPLAINT FOR CONVERSION

On or about December 1, 1959, defendant converted to his own use ten bonds of the .... Company (inserting brief identification as by number and issue) of the value of .... dollars, the property of plaintiff.

Wherefore plaintiff demands judgment against defendant in the sum of .... dollars, interest and costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 11. COMPLAINT FOR SPECIFIC PERFORMANCE OF CONTRACT TO CONVEY LAND

1. On or about December 1, 1958, plaintiff and defendant entered into an agreement in writing a copy of which is hereto annexed as Exhibit A.

2. In accord with the provisions of said agreement plaintiff tendered to defendant the purchase price and requested a conveyance of the land, but defendant refused to accept the tender and refused to make the conveyance.

3. Plaintiff now offers to pay the purchase price.

Wherefore plaintiff demands (1) that defendant be required specifically to perform said agreement; (2) damages in the sum of .... dollars; (3) that if specific performance is not granted plaintiff have judgment against defendant in the sum of .... dollars; and (4) judgment for costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 12. COMPLAINT ON CLAIM FOR DEBT AND TO SET ASIDE FRAUDULENT CONVEYANCE UNDER RULE 18(b)

1. Defendant C.D. on or about June 1, 1958, executed and delivered to plaintiff a promissory note (setting forth the note verbatim, or in substance and legal effect, or by annexing a copy, as in Form 2).

2. Defendant C.D. owes to plaintiff the amount of said note and interest.

3. Defendant C.D. on or about December 1, 1958, conveyed all his property, real and personal (or specify and describe) to defendant E.F. for the purpose of defrauding plaintiff and hindering and delaying the collection of the indebtedness evidenced by the note above referred to.

Wherefore plaintiff demands judgment (1) against defendant C.D. for .... dollars and interest; (2) that the aforesaid conveyance to defendant E.F. be declared void and the judgment herein be declared a lien on said property; (3) for plaintiff's costs.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 13. COMPLAINT FOR NEGLIGENCE UNDER FEDERAL EMPLOYERS' LIABILITY ACT (45 U.S.C.A., 51-58)

1. During all the times herein mentioned defendant owned and operated in interstate commerce a railroad which passed through a tunnel located at .... and known as Tunnel No. .....

2. On or about June 1, 1958, defendant was repairing and enlarging the tunnel in order to protect interstate trains and passengers and freight from injury and in order to make the tunnel more conveniently usable for interstate commerce.

3. In the course of thus repairing and enlarging the tunnel on said day defendant employed plaintiff as one of its workmen, and negligently put plaintiff to work in a portion of the tunnel which defendant had left unprotected and unsupported.

4. By reason of defendant's negligence in thus putting plaintiff to work in that portion of the tunnel, plaintiff was, while so working pursuant to defendant's orders, struck and crushed by a rock, which fell from the unsupported portion of the tunnel, and was (describing plaintiff's injuries).

5. Prior to these injuries, plaintiff was a strong, able-bodied man, capable of earning and actually earning .... dollars per day. By these injuries he has been made incapable of any gainful activity, has suffered great physical and mental pain, and has incurred expense in the amount of .... dollars for medicine, medical attendance and hospitalization.

Wherefore plaintiff demands judgment against defendant in the sum of .... dollars and costs.

History: **En. Sec. 80, Ch. 13, L. 1961.**

Form 14. COMPLAINT FOR INTERPLEADER AND DECLARATORY RELIEF

1. On or about June 1, 1956, plaintiff issued to G.H. a policy of life insurance whereby plaintiff promised to pay to K.L. as beneficiary the sum of ten thousand dollars upon the death of G.H. The policy required the payment by G.H. of a stipulated premium on June 1, 1956, and annually thereafter as a condition precedent to its continuance in force.

2. No part of the premium due June 1, 1956, was ever paid and the policy ceased to have any force or effect on July 1, 1956.

3. Thereafter, on September 1, 1956, G.H. and K.L. died as the result of a collision between a locomotive and the automobile in which G.H. and K.L. were riding.

4. Defendant C.D. is the duly appointed and acting executor of the will of G.H.; defendant E.F. is the duly appointed and acting executor of the will of K.L.; defendant X.Y. claims to have been duly designated as beneficiary of said policy in place of K.L.

5. Each of defendants C.D., E.F., and X.Y. is claiming that the above-mentioned policy was in full force and effect at the time of the death of G.H.; each of them is claiming to be the only person entitled to receive payment of the amount of the policy and has made demand for payment thereof.

6. By reason of these conflicting claims of the defendants, plaintiff is in great doubt as to which defendant is entitled to be paid the amount of the policy, if it was in force at the death of G.H.

Wherefore plaintiff demands that the court adjudge:

(1) That none of the defendants is entitled to recover from plaintiff the amount of said policy or any part thereof.

(2) That each of the defendants be restrained from instituting any action against plaintiff for the recovery of the amount of said policy or any part thereof.

(3) That, if the court shall determine that said policy was in force at the death of G.H., the defendants be required to interplead and settle between themselves their rights to the money due under said policy, and that plaintiff be discharged from all liability in the premises except to the person whom the court shall adjudge entitled to the amount of said policy.

(4) That plaintiff recover its costs.

History: **En. Sec. 80, Ch. 13, L. 1961.**

Form 15. MOTION TO DISMISS

The defendant moves the court as follows:

(1) To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

(2) To dismiss the action or in lieu thereof to quash the return of service of summons on the grounds: (Here state reasons, such as (a) that the defendant is a corporation organized under the laws of Delaware and was not and is not subject to service of process within the State of Montana; (b) that the defendant has not been properly served with process in this action, all of which more clearly appears in the affidavits of M.N. and X.Y. hereto annexed as Exhibit A and Exhibit B, respectively; (c) (etc.).)

....
Attorney for Defendant

....
Address

Notice of Motion

To: ...., Attorney for Plaintiff:

Please take notice, that the undersigned will bring the above motion for hearing before this court at the courtroom thereof in the Courthouse at ...., Montana, on the .... day of ...., 19.., at .... o'clock ....M. or as soon thereafter as counsel can be heard.

....
Attorney for Defendant

....
Address

History: En. Sec. 80, Ch. 13, L. 1961.

Form 16. ANSWER PRESENTING DEFENSES UNDER RULE 12(b)

FIRST DEFENSE

The complaint fails to state a claim against defendant upon which relief can be granted.

SECOND DEFENSE

If defendant is indebted to plaintiffs for the goods mentioned in the complaint, he is indebted to them jointly with G.H. G.H. is alive; is a citizen and resident of the State of Montana; is subject to the jurisdiction of this court, as to both service of process and venue; can be made a party, but has not been made one.

THIRD DEFENSE

Defendant admits the allegation(s) contained in paragraph(s) .... of the complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph(s) .... of the complaint; and denies each and every other allegation contained in the complaint.

FOURTH DEFENSE

The right of action set forth in the complaint did not accrue within .... years next before the commencement of this action, and is therefore barred by the provisions of section (setting forth the particular section or subsection applicable thereto).

COUNTERCLAIM

(Here set forth any claim as a counterclaim in the manner in which a claim is pleaded in a complaint.)

CROSS-CLAIM AGAINST DEFENDANT M.N.

(Here set forth the claim constituting a cross-claim against defendant M.N. in the manner in which a claim is pleaded in a complaint.)

History: En. Sec. 80, Ch. 13, L. 1961.

Form 17. ANSWER TO COMPLAINT SET FORTH IN FORM 7, WITH COUNTERCLAIM FOR INTERPLEADER

DEFENSE

Defendant denies the allegations of the complaint to the extent set forth in the counterclaim herein.

COUNTERCLAIM FOR INTERPLEADER

1. Defendant received the sum of ten thousand dollars as a deposit from E.F.
2. Plaintiff has demanded the payment of such deposit to him by virtue of an assignment of it which he claims to have received from E.F.
3. E.F. has notified the defendant that he claims such deposit, that the purported assignment is not valid, and that he holds the defendant responsible for the deposit.

Wherefore defendant demands:

(1) That the court order E.F. to be made a party defendant to respond to the complaint and to this counterclaim.

(2) That the court order the plaintiff and E.F. to interplead their respective claims.

(3) That the court adjudge whether the plaintiff or E.F. is entitled to the sum of money.

(4) That the court discharge defendant from all liability in the premises except to the person it shall adjudge entitled to the sum of money.

(5) That the court award to the defendant its costs and attorney's fees.

History: En. Sec. 80, Ch. 13, L. 1961.

Form 18. SUMMONS AND THIRD-PARTY COMPLAINT—INTERPLEADER

A.B., Plaintiff, vs. C.D., Defendant, and Third-Party Plaintiff, vs. E.F., Third-Party Defendant.	THIRD-PARTY SUMMONS Civil No....

The State of Montana to the Above-Named Third-Party Defendant:

You are hereby summoned to answer the third-party complaint in this action which is filed in the office of the clerk of this court, a copy of which is herewith served upon you, and to file your answer and serve a copy thereof upon the plaintiff's attorney and upon the attorney for defendant and third-party plaintiff within 20 days after the service of this third-party summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the third-party complaint.

Witness my hand and the seal of said court, this .... day of .....

....
Clerk of the District Court

(COURT SEAL)
G.H.
Attorney for Defendant
and Third-Party Plaintiff
....
(Address)
...., Montana
The name and address of the
attorney for Plaintiff is:
J.K.
....
(Address)
...., Montana

A.B., Plaintiff,
vs.
C.D., Defendant, and
Third-Party Plaintiff,
vs.
E.F., Third-Party Defendant.

THIRD-PARTY
COMPLAINT
Civil No....

1. Plaintiff A.B. has filed against defendant C.D., a complaint, a copy of which is hereto attached as Exhibit C.

2. (Here state the grounds upon which C.D. is entitled to recover from E.F., all or part of what A.B. may recover from C.D. The statement should be framed as in an original complaint.)

Wherefore C.D. demands judgment against third-party defendant E.F. for .... dollars and for costs.

....
Attorney for Third-Party Plaintiff ....
(Address)

History: En. Sec. 80, Ch. 13, L. 1961.

Form 18-A. NOTICE AND ACKNOWLEDGMENT FOR SERVICE BY MAIL

A.B., Plaintiff,
vs.
C.D., Defendant.

Civil No......
NOTICE AND ACKNOWLEDGMENT OF
RECEIPT OF SUMMONS AND
COMPLAINT

NOTICE

To: (insert the name and address of the person to be served.)

The enclosed summons and complaint are served pursuant to Rule 4D(1)(b) of the Montana Rules of Civil Procedure.

You may complete the acknowledgment part of this form and return one copy of the completed form to the sender within 20 days after the date it was mailed to you as shown below.

If you decide to complete and return this form, you must sign and date the acknowledgment. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return this form to the sender within 20 days after the date it was mailed to you as shown below, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within 20 days after the date of signature which you place on the acknowledgment below. If you fail to answer the complaint within the foregoing 20 day period, judgment by default will be taken against you for the relief demanded in the complaint.

I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt of Summons and Complaint was mailed on (insert date).

....
Signature

....
Date of Signature

ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT

I declare, under penalty of perjury, that I received a copy of the summons and of the complaint in the above captioned matter at (insert address).

....
Signature

....
Relationship to Entity/Authority to Receive Service of Process

....
Date of Signature

History: **En. Sup. Ct. Ord. Oct. 9, 1984, eff. Oct. 9, 1984.**

Form 19. MOTION TO INTERVENE AS A DEFENDANT UNDER RULE 24

A.B., Plaintiff,
vs.
C.D., Defendant,
E.F., Applicant for Intervention

MOTION TO INTERVENE AS A DEFENDANT
Civil No...

E.F. moves for leave to intervene as a defendant in this action, in order to assert the defenses set forth in his proposed answer, of which a copy is hereto attached, on the grounds (here set forth generally the grounds upon which intervention is sought, in accordance with the right of intervention contained in Rule 24) and as such as a defense to plaintiff's claim presenting (setting forth whether the same relates to questions of law or fact, or both) which are common to the main action.

....
Attorney for E.F.,
Applicant for Intervention
....
(Address)

NOTICE OF MOTION

(Contents the same as those in Form 15, or notice and motion may be combined in a notice of motion as provided in Rule 7(b).)

INTERVENER'S ANSWER

(Set forth defenses in accordance with the outline contained in Form 16)

History: En. Sec. 80, Ch. 13, L. 1961.

Form 20. MOTION FOR PRODUCTION, ETC., UNDER RULE 34

Plaintiff A.B. moves the court for an order requiring defendant C.D.:

(1) To produce and to permit plaintiff to inspect and to copy each of the following documents:

[Here list the documents and describe each of them.]

(2) To produce and permit plaintiff to inspect and to photograph each of the following objects:

[Here list the objects and describe each of them.]

(3) To permit plaintiff to enter [here describe property to be entered] and to inspect and to photograph [here describe the portion of the real property and the objects to be inspected and photographed].

Defendant C.D. has the possession, custody, or control of each of the foregoing documents and objects and of the above-mentioned real estate. Each of them constitutes or contains evidence relevant and material to a matter involved in this action, as is more fully shown in Exhibit A hereto attached.

....
Attorney for Plaintiff
....
Address

EXHIBIT A

STATE OF MONTANA
County of Lewis and Clark

A.B., being first duly sworn says:

(1) (Here set forth all that plaintiff knows which shows that defendant has the papers or objects in his possession or control.)

(2) (Here set forth all that plaintiff knows which shows that each of the above-mentioned items is relevant to some issue in the action.)

A.B. (Signed)

(Jurat)

History: En. Sec. 80, Ch. 13, L. 1961.

Form 21. REQUEST FOR ADMISSION UNDER RULE 36

Plaintiff A.B. requests defendant C.D. within .... days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, exhibited with this request, is genuine.

[Here list the documents and describe each document.]

2. That each of the following statements is true. [Here list the statements.]

....
Attorney for Plaintiff

....
Address

History: En. Sec. 80, Ch. 13, L. 1961.

Form 22. ALLEGATION OF REASON FOR OMITTING NECESSARY PARTY

John Doe named in this complaint is not made a party to this action [because he is not subject to the jurisdiction of this court]; or [for reasons stated].

History: En. Sec. 80, Ch. 13, L. 1961.

Form 23. SUPERSEDEAS BOND

We the undersigned jointly and severally acknowledge that we and our personal representatives are jointly bound to pay to (respondent) the sum of $.....

(Appellant) has appealed from that certain judgment (or order) (insert descriptive facts) and has obtained an order staying execution from the district court, and the condition of this bond is that if the judgment (or order) appealed from, or any part thereof, be affirmed, or the appeal dismissed, the appellant will pay the amount directed to be paid by the judgment (or order) or the part of such amount as to which the judgment (or order) is affirmed, if affirmed only in part, and all damages and costs which may be awarded against the appellant upon the appeal. If such payment be made then this bond is void, otherwise to be and remain in full force and effect. If the appellant does not make such payment within thirty days after the filing of the remittitur from the supreme court in the court from which the appeal is taken, judgment may be entered on motion of the respondent in his favor against the sureties for such amount, together with the interest that may be due thereon, and the damages and costs which may be awarded against the appellant upon the appeal.

.... Appellant	.... Address
.... Surety	.... Address
.... Surety	.... Address
(Justification of Sureties) Form of bond approved.	.... Judge

(This form with necessary alterations may be used in any situation covered by Rule 62.)

History: En. Sec. 80, Ch. 13, L. 1961 as added by Sec. 1, Ch. 3. L. 1963.

CHAPTER 21

RULES OF APPELLATE PROCEDURE

I. Applicability of Rules

Rule
1. Scope of rules — from what judgment or order an appeal may be taken.
2. What the court may review on an appeal from a judgment.
3. Suspension of the rules.

II. Appeals From Judgments and Orders of District Courts

4. How taken.
5. Time for filing notice of appeal.
6. Undertaking for costs on appeal in civil cases.
7. Stay of judgment or order pending appeal.
8. Sureties and their justification.
9. The record on appeal.
10. Transmission of the record.
11. Docketing the appeal — filing of the record.
12. Effect of dismissal.
13. Acts of personal representatives or guardians valid when appointment vacated.
14. Ruling against respondent may be reviewed.
15. Remedial powers of the supreme court in civil cases.
16. Remittitur must be certified to the clerk of the district court.

III. Original Proceedings — Extraordinary Writs

17. Acceptance and manner of conducting.

IV. Appeals in Forma Pauperis

18. Applications and manner of proceeding.

V. General Provisions

19. Record of commissions and oaths.
20. Filing and service.
21. Computation and extension of time.
22. Motions.
23. Briefs.
24. Brief of an amicus curiae.
25. The appendix to the briefs.
26. Filing and service of briefs.
27. Form of briefs and other papers — duplication.
28. Prehearing conference.
29. Oral argument.
30. Entry and notice of orders.
31. Interest on judgments.
32. Damages for appeal without merit.
33. Costs in civil cases.
34. Petitions for rehearing.
35. Notice and copy of decision — remittitur — mandate from United States supreme court.
36. Voluntary dismissal.
37. Substitution of parties in civil cases.
38. Cases involving constitutional questions where the state is not a party.
39. Calendar — withdrawal of records.
40. Appeals from injunction orders.
41. Renumbered Rule 51.
42. Renumbered Rule 52.
43. Renumbered Rule 53.

44. Certification of questions of law.
Rules 45 through 50 reserved.
51. Statutes and rules amended.
52. Applicability in general.
53. Title — effective date — statutes superseded.

Appendix of Forms

Form

1. Notice of appeal to the supreme court of the state of Montana from a judgment or order of a district court.
2. Affidavit to accompany motion for leave to appeal in forma pauperis.

Chapter Cross-References

Supreme Court jurisdiction, Art. VII, sec. 2, Mont. Const.

Courts and judicial officers generally, Title 3, ch. 1.

Supreme Court, Title 3, ch. 2.

Appeal to Supreme Court, Title 25, ch. 12.

Appeal from District Court to Supreme Court, Rule 72, M.R.Civ.P. (see Title 25, ch. 20).

Criminal appeals, Title 46, ch. 20.

I. Applicability of Rules

Rule 1. Scope of rules — from what judgment or order an appeal may be taken.

(a) These rules govern procedure in appeals in civil and criminal cases to the supreme court of Montana from Montana district courts and original proceedings in the supreme court of Montana. The party applying for original relief is known as the petitioner and the adverse party as the defendant. The party appealing is known as the appellant, and the adverse party as the respondent.

(b) In civil cases a party aggrieved may appeal from a judgment or order, except when expressly made final by law, in the following cases:

(1) From a final judgment entered in an action or special proceeding commenced in a district court, or brought into a district court from another court or administrative body.

(2) From an order granting a new trial; or refusing to permit an action to be maintained as a class action; or granting or dissolving an injunction; or refusing to grant or dissolve an injunction; or dissolving or refusing to dissolve an attachment; from an order changing or refusing to change the place of trial when the county designated in the complaint is not the proper county; from an order appointing or refusing to appoint a receiver, or giving directions with respect to a receivership, or refusing to vacate an order appointing or affecting a receiver; from an order directing the delivery, transfer, or surrender of property; from any special order made after final judgment; and from such interlocutory judgments or orders, in actions for partition as determine the rights and interests of the respective parties and direct partition to be made. In any of the cases mentioned in this subdivision the supreme court, or a justice thereof, may stay all proceedings under the order appealed from, on such conditions as may seem proper.

(3) From a judgment or order granting or refusing to grant, revoking or refusing to revoke, letters testamentary, or of administration, or of guardianship; or admitting or refusing to admit a will to probate, or against or in favor of the validity of a will, or revoking or refusing to revoke the probate thereof;

or against or in favor of setting apart property, or making an allowance for a widow or child; or against or in favor of directing the partition, sale, or conveyance of real property, or settling an account of an executor, or administrator, or guardian; or refusing, allowing, directing the distribution or partition of any estate, or any part thereof, or the payment of a debt, claim, legacy, or distributive share; or confirming or refusing to confirm a report of an appraiser setting apart a homestead.

(c) All questions raised on an order overruling a motion for a new trial or on an order changing or refusing to change the place of trial under [R.C.M. 1947, section 93-2906, subdivision 4 thereof or] subsection (2) or (3) of section 25-2-201, Montana Code Annotated, may be raised and reviewed on an appeal from the judgment.

(d) Appeals may be taken in criminal cases as provided in sections 46-20-103 and 46-20-104, Montana Code Annotated.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Venue, Title 25, ch. 2.

New trial, Title 25, ch. 11.

Receivers, Title 25, ch. 14, part 2.

Determination by order whether class action to be maintained, Rule 23(c), M.R.Civ.P. (see Title 25, ch. 20).

Order granting new trial, Rule 59(f), M.R.Civ.P. (see Title 25, ch. 20).

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Receivers, Rule 66, M.R.Civ.P. (see Title 25, ch. 20).

Rule 2. What the court may review on an appeal from a judgment.

(a) Upon appeal from a judgment in a civil case, the court may review the verdict or decision, and any intermediate order or decision excepted or objected to within the meaning of Rule 46 of the Montana Rules of Civil Procedure, which involves the merits, or necessarily affects the judgment, except a decision or order from which an appeal might have been taken.

(b) The scope of review in criminal cases is governed by sections 46-20-701 and 46-20-702, Montana Code Annotated.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Judgment to be on the merits, 25-9-101.

Rule 3. Suspension of the rules.

In the interest of expediting decision upon any matter before it, or for other good cause shown, the supreme court may, except as otherwise provided in Rule 21(b), suspend the requirements or provisions of these rules on application of a party or on its own motion and may order proceedings in accordance with its direction.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

II. Appeals From Judgments and Orders of District Courts

Rule 4. How taken.

(a) Filing the notice of appeal. An appeal shall be taken by filing a notice of appeal in the district court. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the supreme court deems appropriate, which may include dismissal of the appeal.

(b) Joint or consolidated appeals. If two or more persons are entitled to appeal from a judgment or order of a district court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the supreme court upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(c) Content of the notice of appeal. The notice of appeal shall specify the party or parties taking the appeal; and shall designate the judgment, order or part thereof appealed from. Form 1 in the Appendix of Forms is a suggested form of notice of appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

(d) Service of notice of appeal. The clerk of the district court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, or, if a party is not represented by counsel, to the party at his last known address, and shall mail a copy of the notice of appeal to the clerk of the supreme court. The clerk of the district court shall note on each copy served the date on which the notice of appeal was filed. If an appellant is represented by counsel, his counsel shall provide the clerk with sufficient copies of the notice of appeal to permit the clerk to comply with the requirements of this rule. Failure of the clerk to serve notice shall not affect the validity of the appeal. The notice shall be sufficient notwithstanding the death of a party or his counsel. The clerk shall note in the docket the names of the parties to whom he mails copies, with the date of mailing.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Notice of appeal to be served on Attorney General, 25-1-502.

Substitution of parties in civil cases, Rule 37, M.R.App.P.

Cases involving constitutional questions where the state is not a party, Rule 38, M.R.App.P.

Death or removal of attorney, 37-61-405.

Rule 5. Time for filing notice of appeal.

(a) Appeals in civil cases.

(1) In civil cases the notice of appeal required by Rule 4 shall be filed with the clerk of the district court within 30 days from the date of the entry of the judgment or order appealed from, except that in cases where service of notice of entry of judgment is required by Rule 77(d) of the Montana Rules of Civil Procedure the time shall be 30 days from the service of notice of entry of judgment; but if the State of Montana, or any political subdivision thereof, or an officer or agency thereof is a party the notice of appeal shall be filed within 60 days from the entry of the judgment or order or 60 days from the service of notice of the entry of judgment. If a notice of appeal is mistakenly filed in the supreme court, the clerk of the supreme court shall note thereon the date on which it was received and transmit it to the clerk of the district court and it shall be deemed filed in the district court on the date so noted.

(2) Except as provided in subsection (a)(4) of this Rule 5, a notice of appeal filed after the announcement of a decision or order but prior to the time that the appeal period begins to run under subsection (a)(1) of this Rule 5, i.e., before the entry of the order or judgment appealed from or the service of the notice of entry of judgment as the case may be, shall be treated as filed after such entry and on the day thereof.

(3) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this Rule 5(a), whichever period last expires.

(4) If a timely motion under the Montana Rules of Civil Procedure is filed in the district court by any party: (i) for judgment under Rule 50(b); (ii) under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (iii) under Rule 59 to alter or amend the judgment; or (iv) under Rule 59 for a new trial , the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion, or if applicable, from the time such motion is deemed denied at the expiration of the 45-day period established by Rule 59(d), Montana Rules of Civil Procedure. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above, or if applicable, from the date of the expiration of the 45-day period established in Rule 59(d), Montana Rules of Civil Procedure. No additional fees shall be required for such filing.

(5) The district court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by this Rule 5(a). Any such motion which is filed before expiration of the prescribed time may be ex parte unless the court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with local rules. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

(b) Appeals in criminal cases.

In criminal cases an appeal from a judgment must be taken within 60 days. An appeal from an order or judgment made appealable by section 46-20-103, Montana Code Annotated must be taken within 14 days.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 6. Undertaking for costs on appeal in civil cases.

(a) The district court may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to insure payment of costs on appeal in a civil case. The provisions of Rule 8(a) apply to a surety upon a bond given pursuant to this rule.

(b) No undertaking for costs is required in appeals in criminal cases.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.

Costs in civil cases, Rule 33, M.R.App.P.

Rule 7. Stay of judgment or order pending appeal.

(a) [Stay upon entry of judgment—undertaking]. Upon entry of a judgment or order in a civil case a party may apply to the district court on notice or ex parte for a stay of the execution of the judgment or order. The court in its discretion may grant said stay for such period of time and under such conditions as the court deems proper, including restraining the party from disposing of, encumbering, or concealing his property. However, a district court's stay of execution, granted pursuant to this section, shall not be effective for more than 30 days following the district court's disposition of motions made pursuant to Rules 50(b), 52(b), 59 or 60(b) of the Montana Rules of Civil Procedure.

(b) Upon service of notice of appeal, if the appellant desires a stay of execution, he must, unless the requirement is waived by the opposing party, present to the district court and secure its approval of a supersedeas bond which shall have two sureties or a corporate surety as may be authorized by law. The bond shall be conditioned for the satisfaction of the judgment or order in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment or order is affirmed, and to satisfy in full such modification of the judgment or order and such costs, interest, and damages as the supreme court may adjudge and award. When the judgment or order is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment or order remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the district court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment or order determines the disposition of property in controversy as in real actions, replevin, and actions to foreclose mortgages, or when such property is in the custody of the sheriff or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay. On application, the supreme court in the interest of justice may suspend, modify, restore, or grant any order made under this subdivision.

(c) [Sale of perishable property]. If the judgment or order appealed from directs the sale of perishable property, the district court may order the property to be sold and the proceeds thereof to be deposited, to abide the judgment of the supreme court.

(d) [Cases in which stay of proceedings not allowed]. No stay of proceedings shall be allowed upon a judgment or order which adjudges the defendant guilty of usurping, or intruding into, or unlawfully holding public office, civil or military, within this state; or which grants a writ of mandamus, or of prohibition, against a tribunal, corporation, public officer, or board, commanding certain acts to be done which ought to be done by such tribunal, corporation, public officer, or board, and not involving the payment or allowance of money or its equivalent.

(e) Stays in criminal cases are governed by sections 46-20-204 and 46-20-205, Montana Code Annotated.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Deposits in court — delivery to party, Title 25, ch. 8.

Stay of proceedings to enforce judgment, Rule 62, M.R.Civ.P. (see Title 25, ch. 20).

Costs in civil cases, Rule 33, M.R.App.P.

Claim and delivery, Title 27, ch. 17.

Mandamus, Title 27, ch. 26.

Writ of Prohibition, Title 27, ch. 27.

Quo warranto, Title 27, ch. 28.

Rule 8. Sureties and their justification.

(a) [Liability of surety—enforcement]. In cases where an undertaking on appeal or supersedeas bond with sureties is required, the provisions of sections 25-1-402, 25-13-105, 33-26-101, 33-26-102, and 72-31-101, Montana Code Annotated, apply. By entering into an undertaking on appeal or supersedeas bond given pursuant to Rules 6 and 7, the surety submits himself to the jurisdiction of the district court and irrevocably appoints the clerk of the district court as his agent upon whom papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of any independent action. The motion and such notice of the motion as the district court prescribed may be served on the clerk of that court, who shall forthwith mail copies to each surety whose address is known.

(b) [Justification of sureties]. A party may except to the sufficiency of the sureties to any bond or undertaking mentioned in this rule at any time within 30 days after the filing of such bond or undertaking; and unless they or other sureties, within 20 days after service of notice of such exception, justify before a judge of the district court, or the clerk thereof, upon 5 days' notice to the other parties of the time and place of justification, execution of the judgment or order appealed from is no longer stayed.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Rule 9. The record on appeal.

(a) Composition of the record on appeal. The original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

(b) The transcript of proceedings — duty of appellant to order — notice to respondent if partial transcript is ordered — costs of producing. Within 10 days after filing the notice of appeal the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record. In all cases where the appellant intends to urge insufficiency of the evidence to support the verdict, order or judgment in the district court, it shall be the duty of the appellant to order the entire transcript of the evidence. Wherever the sufficiency of the evidence to support a special verdict or answer by a jury to an interrogatory, or to support a specific finding of fact by the trial court, is to be raised on the appeal by the appellant, he shall be under a duty to include in the transcript all evidence relevant to such verdict, answer or finding. Unless the entire transcript is to be included, the appellant shall, within the time above provided, file and serve on the respondent a description of the parts of the transcript which he intends to include in the record and a statement of the issues which he intends to present on the appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary he shall within 10 days after such filing and service order such parts from the reporter or procure an order from the district court requiring the appellant to so do.

Except as provided in subsection (c) of this rule, the cost of producing the transcript shall be paid by the appellant, or he shall make satisfactory arrangements with the reporter for the payment of such cost; but, if the appellant considers that any part of the record designated by the respondent for inclusion is unnecessary for the determination of the issues presented, he shall advise the respondent, and the district court may impose upon the respondent the cost of producing any part which it deems unnecessary for the determination of the issues.

The reporter shall certify the correctness of the transcript.

(c) Transcript of proceedings in criminal cases—defendants without financial means—petition in supreme court.

(1) Upon imposition of any sentence in a criminal case, a defendant may file in the trial court a petition requesting that he be furnished with a transcript of the proceedings at his trial. The petition shall be verified by the petitioner and shall state facts showing that he is at the time of filing the petition without financial means to pay for the transcript. If the trial judge who imposed sentence or in his absence any judge of the court finds that the defendant is without financial means with which to obtain the transcript of the proceedings at his trial, he shall order the official court reporter to transcribe an original and copy of his notes of the proceedings at the trial. The original of the report of proceedings shall be filed with the clerk of the trial court, and the copy shall be delivered to the defendant without charge.

(2) If the petition provided for in subsection (1) is denied by the trial court, a petition so to proceed may be filed in the supreme court within 30 days after entry of the denial. The petition shall be accompanied by a copy of the verification filed in the trial court and a copy of the statement of reasons for denial given by the trial court.

(d) Statement of the evidence or proceedings when no report was made or when the transcript is unavailable. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may, within 10 days from the hearing or trial or such time extended as the district court may for good cause shown permit, prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the respondent, who may serve objections or propose amendments thereto within 10 days after service. Thereupon, the statement and any objections or proposed amendments shall be submitted for settlement and approval to the district judge who handled the proceedings, and as settled and approved shall be included by the clerk of the district court in the record on appeal. A judge may settle and approve such record after he ceases to be a judge. If such judge before the statement is settled and approved dies, is removed from office, becomes disqualified, is absent from the state, or refuses to settle and approve the statement, it shall be settled and approved in such manner as the supreme court may direct.

(e) Agreed statement as the record on appeal. In lieu of the record on appeal as defined in subdivision (a) of this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the district court and shall then be certified to the supreme court as the record on appeal and transmitted thereto by the clerk of the district court within the time provided by Rule 10. Copies of the agreed statement may be filed as the appendix required by Rule 25.

(f) Correction or modification of the record. If any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the district court, either before or after the record is transmitted to the supreme court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the supreme court.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Docket of District Court, 3-5-508.

Copy of proceedings by court reporter, 3-5-604.

Rule 10. Transmission of the record.

(a) Time for transmission — number of copies of transcript — duty of appellant. The record on appeal, including the transcript necessary for the determination of the appeal, shall be transmitted to the supreme court within 40 days after the filing of the notice of appeal unless the time is shortened or extended by an order entered under subdivision (c) of this rule. Three copies of each transcript must be lodged with the clerk of this court for filing. Promptly after filing the notice of appeal the appellant shall comply with the provisions of Rule 9(b) and shall take any other action necessary to enable the clerk to assemble and transmit the record. If more than one appeal is filed, each appellant shall comply with the provisions of Rule 9(b) and this subdivision, and a single record shall be transmitted within 40 days after the filing of the final notice of appeal.

(b) Duty of clerk to transmit the record. When the record is complete for purposes of the appeal, the clerk of the district court shall transmit it to the clerk of the supreme court. The clerk shall number the documents comprising the record and shall transmit with the record a numbered list of the documents, identifying each with reasonable definiteness. Documents in bulky containers and physical exhibits other than documents shall not be transmitted by the clerk unless he is directed to do so by a party or by the clerk of the supreme court. A party must make advance arrangements with the clerk of the district court for the transportation of bulky or weighty exhibits and with the clerk of the supreme court for their receipt. Transmission of the record is effected when the clerk of the district court mails or otherwise forwards the record to the supreme court. The clerk of the district court shall indicate, by endorsement on the face of the record or otherwise, the date upon which it is transmitted to the supreme court.

(c) Extension of time for transmission of the record — reduction of time. The district court may extend the time for transmitting the record. The request for extension must be made within the time originally prescribed or within an extension previously granted, and the district court shall not extend the time to a day more than 90 days from the date of filing of the first notice of appeal. If the district court is without authority to grant the relief sought or has denied a request therefor, the supreme court may on motion extend the time for transmitting the record or may permit the record to be transmitted and filed after the expiration of the time allowed or fixed. A motion for an extension of time for transmitting the record made in either court shall show that the inability of the appellant to cause timely transmission of the record is due to causes beyond his control or to circumstances which may be deemed excusable neglect. Such a motion shall be served upon all other parties to the appeal or review or upon their counsel if represented by such and also upon the district court judge who presided. The motion shall include whether or not previous extensions of time have been granted and if so, the total amount of time extended. If a request has previously been denied, the motion shall set forth the denial and state the reasons therefor, if any were given.

The district court or the supreme court may require the record to be transmitted and the appeal to be docketed at any time within the time otherwise fixed or allowed therefor.

(d) Retention of the record in the district court by order of court. The supreme court may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

If the record is required in the district court for use there pending the appeal, the district court may make an order to that effect, and the clerk of the district court shall retain the record and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the district court shall allow and copies of such parts as the parties may designate.

If the record is retained in the district court by order of either court, the clerk of the district court shall retain it subject to the order of the supreme court, and transmission of the copy of the docket entries shall constitute transmission of the record.

(e) Stipulation of parties that parts of the record be retained in the district court. The parties may agree by written stipulation filed in the district court that designated parts of the record shall be retained in the district court unless thereafter the supreme court shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

(f) Record for preliminary hearing in the supreme court. If prior to the time the record is transmitted a party desires to make in the supreme court a motion for dismissal, for a stay pending appeal, for additional security on the undertaking on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the district court at the request of any party shall transmit to the supreme court such parts of the original record as the party shall designate.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750, June 30, 1981; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Compiler's Comments

1981 Amendment — Reasons — Effective Date: Supreme Court Order 10750, June 30, 1981, provided in part:

"1. The Court received from the Advisory Committee to the Supreme Court of the State of Montana on Rules of Civil Procedure its Report and Proposal that Rule 10(a) of the Montana

Rules of Appellate Civil Procedure be amended to provide that three copies of each transcript, instead of six copies, be filed with the clerk of this Court on appeals.

2. On December 9, 1980, in an order entered in our cause no. 10750 (1980), we directed that notice of said proposal be given as required by section 3-2-703, MCA, and further directed that within six months of the filing of the petition by the Advisory Committee members of the bar or bench might file suggestions regarding the proposal, or request hearing thereon within said six month period.

3. No request for hearing has been filed within the said time by any member of the bench or bar.

4. The association of Montana judges has adopted a resolution requesting (1) delay of one year in adopting the proposal for the purpose of a study; (2) requesting hearings outside the six month period provided by section 3-2-703, MCA, on the proposal, and (3) requesting the aid of this Court in procuring increased allowances for transcripts from the legislature.

5. The legislature, in Chapter 295, Laws of Montana (1981), increased the permissible folio charge allowed to court reporters from 7 ½ cents per folio to 10 cents per folio, effective October 1, 1981.

6. The reason given by the Advisory Committee in submitting the proposal are these:

"COMMENT: The amendment is made for the purpose of economizing as to the expense of appeals to the Montana Supreme Court, and also assisting the court in solving a filing space problem which confronts the court. The amendment recognizes that no one, including the court, the parties and the clerk of court, has any real need for more than three copies of the transcript on an appeal, nor will any such need exist when the court is expanded to seven Justices, commencing January 1, 1981."

7. The Court finds that the reasons given by the Advisory Committee for the proposal outweighs any need for delay in adopting the proposal, and that the matter of increased allowances for court reporters is a legislative matter outside the province of this Court unless such allowance became so unreasonable as to affect the business of this Court. . . .

9. Said amendment shall be effective as to all transcripts required to be filed in this Court, based on notices of appeal filed and served on or after July 1, 1981 or proceedings had or taken to this Court commencing on and continuing from July 1, 1981."

Note: Montana Rules of Appellate Civil Procedure are now cited as Montana Rules of Appellate Procedure.

Cross-References

General duties of clerk, 3-5-501.

Rule 11. Docketing the appeal — filing of the record.

(a) Docketing the appeal. Within the time allowed or fixed for transmission of the record, the appellant shall pay to the clerk of the supreme court the fee for filing the record on appeal fixed by sections 3-2-403 and 3-2-404 of the Montana Code Annotated, and the clerk shall thereupon enter the appeal upon the docket. In criminal cases and other cases in which an appellant is authorized to prosecute the appeal without prepayment of fees, the clerk shall enter the appeal upon the docket at or before the time of filing the record. An appeal shall be docketed under the title given to the action in the district court with such addition as is necessary to indicate the identity of the appellant.

(b) Filing of the record. Upon receipt of the record by the clerk of the supreme court following its timely transmittal, and after the appeal has been timely docketed, the clerk shall file the record. The clerk shall immediately give notice to all parties of the date on which the record was filed.

(c) Dismissal for failure of appellant to cause timely transmission or to docket appeal. If the appellant shall fail to cause timely transmission of the record or to pay the filing fee if a filing fee is required, any respondent may file a motion in the supreme court to dismiss the appeal. The motion shall be supported by a certificate of the clerk of the district court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, and the expiration date of any order extending the time for transmitting the record; and by proof that 7 days' notice in writing has been served on the appellant that application will be made for dismissal of the appeal. The clerk shall docket the appeal for the purpose of permitting the court to entertain the motion, without requiring payment of the filing fee, but the appellant shall not be permitted to appear without payment of the fees unless he is otherwise exempt therefrom. Instead of filing a motion to dismiss the appeal, the respondent may cause the record to be transmitted and may docket the appeal, in which event the appeal shall proceed as if the appellant had caused it to be docketed.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Fees to be collected by Clerk of Supreme Court, 3-2-403.

Rule 12. Effect of dismissal.

The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Cross-References

Motions for dismissal, Rule 22, M.R.App.P.

Consequences of failure to file brief, Rule 26(c), M.R.App.P.

Voluntary dismissal, Rule 36, M.R.App.P.

Rule 13. Acts of personal representatives or guardians valid when appointment vacated.

When the judgment or order appointing a personal representative or guardian is reversed on appeal, for error, and not for want of jurisdiction of the court, all lawful acts in administration upon the estate performed by such personal representative or guardian, if he has qualified, are as valid as if such judgment or order had been affirmed.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Qualifications of personal representative, Title 72, ch. 3, part 5.

Who may be a guardian — priorities, 72-5-312.

Rule 14. Ruling against respondent may be reviewed.

Whenever the record on appeal in a civil case shall contain any order, ruling, or proceeding of the trial court against the respondent, affecting his substantial rights on the appeal of said cause, together with any required objection or exception of such respondent, the supreme court on such appeal shall consider such orders, rulings, or proceedings, and the objections and exceptions thereto, and shall reverse or affirm the cause on said appeal according to the substantial rights of the respective parties, as shown upon the record. And no civil cause shall be reversed upon appeal by reason of any error committed by the trial court against the appellant, where the record shows that the same result would have been attained had such trial court not committed an error or errors against the respondent.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 15. Remedial powers of the supreme court in civil cases.

In a civil case when the judgment or order is reversed or modified, the supreme court may make complete restitution of all property and rights lost by the erroneous judgment or order, so far as such restitution is consistent with protection of a purchaser of property at a sale ordered by the judgment, or had under process issued upon the judgment, on an appeal from which the proceedings were not stayed; and for relief in such cases the appellant may have his action against the respondent, enforcing the judgment for the proceeds of the sale of the property, after deducting therefrom the expenses of the sale.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Sale on execution of judgment, Title 25, ch. 13, part 7.

Rule 16. Remittitur must be certified to the clerk of the district court.

When judgment is rendered upon the appeal, it must be certified by the clerk of the supreme court to the clerk of the district court from which the appeal is taken. The clerk of the district court must enter at length in the records of the court the certificate received. Also, in cases of appeal from a judgment, the clerk must enter a minute of the judgment of the supreme court on the docket against the original entry; and in cases of appeal from an order, he must enter a minute against the entry of the order appealed from, containing a reference to the certificate, with a brief statement that such order has been affirmed, reversed, or modified by the supreme court on appeal.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Cross-References

No petition for rehearing allowed when remittitur ordered, Rule 34, M.R.App.P.

Remittitur, when issued, Rule 35(b), M.R.App.P.

III. Original Proceedings — Extraordinary Writs

Rule 17. Acceptance and manner of conducting.

(a) When accepted. The supreme court is an appellate court but it is empowered by the constitution of Montana to hear and determine such original and remedial writs as may be necessary or proper to the complete exercise of its jurisdiction. The institution of such original proceedings in the supreme court is sometimes justified by circumstances of an emergency nature, as when a cause of action or a right has arisen under conditions making due consideration in the trial courts and due appeal to this court an inadequate remedy, or when supervision of a trial court other than by appeal is deemed necessary or proper.

(b) How commenced and conducted. Proceedings commenced in the supreme court originally to obtain writs of habeas corpus, injunction, review, mandate, quo warranto, supervisory control, and other remedial writs or orders, shall be commenced and conducted in the manner prescribed by the applicable sections of the Montana Code Annotated for the conduct of such or analogous proceedings and by these additional rules. All papers filed shall conform to the requirements of Rule 27, except that typewritten applications, briefs, copies of exhibits and the like may be used without securing permission of the chief justice as required by Rule 27(a). The provisions of Rule 27(b) shall be observed.

(c) Applications — where and when filed. An original application may be made to the supreme court at any time. The moving party's application and all supporting documents shall be filed with the clerk of the supreme court.

(d) Applications — what to contain. The application for the issuance of the above writs or orders must set forth, in addition to the other requisite matters, the particular questions and issues anticipated or expected to be raised in the proceeding and also the fact which renders it necessary and proper that the writ should issue originally from the supreme court; the said matters will be taken into consideration by the court in determining the necessity and propriety of accepting jurisdiction and granting the alternative writ or order to show cause. Each application shall also set forth as exhibits, without repetition of title of court and cause, a copy of each judgment, order, notice, pleading, document proceeding or court minute referred to in the application, or which is necessary to make out a prima facie case or to substantiate the pleading or conclusion or legal effect. A memorandum or authorities must be filed with the application. Counsel shall file with the clerk of this court the original court file, unless for some reason the same is not available.

(e) Procedure. The supreme court shall consider an application for an extraordinary writ at the court's next court conference following the filing of the application. On the basis of the application filed, the court shall as promptly as possible, dismiss the petition, accept jurisdiction, or order a response reserving the question of jurisdiction. Only in extraordinary cases will the court grant oral argument to determine the necessity and propriety of accepting jurisdiction.

Unless oral argument is ordered by this court in order to establish jurisdiction, the court will enter an appropriate order forthwith. Such order may dismiss the petition, grant the relief requested, order a hearing on the application, or issue any other writ or order deemed appropriate in the circumstances.

(f) Oral argument. When ordered by this court, an adversary hearing on the application shall be held at the time fixed by the order. The oral argument shall be conducted in the same manner as in the argument of appeals, with the same time limits for presentation, and with the applicant opening and closing the argument.

(g) Briefs. In those cases in which oral argument is ordered, each party shall serve and file briefs in full conformance with Rules 20, 23, and 27, and containing a statement of the facts and of the points of law applicable, with the authorities relied upon.

All briefs shall be served and filed according to the time schedule set forth in the order, and in no event later than 24 hours prior to the time fixed for oral argument.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972; amd. Sup. Ct. Ord., eff. Jan. 1, 1981.

Cross-References

Supreme Court jurisdiction, Art. VII, sec. 2, Mont. Const.

Types of jurisdiction, 3-2-201.

Original jurisdiction, 3-2-202.

Injunctions, 3-2-205; Title 27, ch. 19.

Certiorari — Writ of Review, 3-2-212; Title 27, ch. 25.
Habeas corpus, 3-2-212; Title 46, ch. 22.
Mandamus — Writ of Mandate, Title 27, ch. 26.
Writ of Prohibition, Title 27, ch. 27.
Quo warranto, Title 27, ch. 28.

IV. Appeals in Forma Pauperis

Rule 18. Applications and manner of proceeding.

(a) Application to district court. A party in a civil case who desires to proceed on appeal in forma pauperis shall file in the district court a motion for leave so to proceed together with an affidavit showing, in the detail prescribed by Form 2 of the Appendix of Forms, his inability to pay the fees and costs of the appeal or to give security therefor, his belief that he is entitled to redress, and a statement of the issues he intends to present on appeal. If the motion is granted, the party may proceed on appeal without further application to the supreme court and without payment of fees or costs or the giving of security therefor. If the motion is denied, the district court shall state the reasons for the denial.

(b) Application to the supreme court. If the motion for leave to proceed on appeal in forma pauperis is denied by the district court, a motion for leave so to proceed may be filed in the supreme court within 30 days after entry of the order of denial. The motion shall be accompanied by a copy of the affidavit filed in the district court and of the statement of reasons for denial given by the district court.

(c) Form of briefs, appendices and other papers. Parties allowed to proceed in forma pauperis may file briefs, appendices and other papers in typewritten form.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Poor persons not required to prepay fees in District Court, 25-10-404.

Form of briefs, Rule 27, M.R.App.P.

V. General Provisions

Rule 19. Record of commissions and oaths.

(a) Commissions and oaths. The commissions and oaths of the justices and the clerk of this court, and the attorney general shall be recorded in the records of this court.

(b) Minutes of court. The minutes of this court shall be approved by the chief justice (or in his absence by the associate justice having the shortest term to serve), and attested by the clerk.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Cross-References

Oaths — form — before whom — when, 2-16-211.

Filing, 2-16-212.

Rule 20. Filing and service.

(a) Filing. Papers required or permitted to be filed must be placed in the custody of the clerk within the time fixed for filing. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are actually received within the time fixed for filing. If a motion requests relief which may be granted by a single judge, the judge may permit the motion to be filed with him, in which event he shall note thereon the dates of filing and shall thereafter transmit it to the clerk.

(b) Service of all papers required. Copies of all papers, including any transcript, filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by the party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel. In criminal cases appealed by the defendant all transcripts, briefs, motions, and other papers shall be served on both the county attorney and the attorney general.

(c) Manner of service. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) Proof of service. Papers presented for filing shall contain acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment of proof of service but shall require such to be filed promptly thereafter.

(e) Number of copies to be filed. An original and seven copies of all motions (other than procedural motions), petitions for extraordinary writs or other original proceedings, petitions for rehearing, and the answers or responses thereto, shall be filed with the clerk of the supreme court unless otherwise ordered by the court. The original only of procedural motions shall be filed. The number of copies of transcripts shall be in accordance with Rule 10(a) and the number of copies of briefs shall be in accordance with Rule 26(b).

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Duties of Clerk of Supreme Court, 3-2-402.

Fees, 3-2-403.

Duties of Marshal, 3-2-502.

Rule 21. Computation and extension of time.

(a) Computation of time. In computing any period of time prescribed by these rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) Extension of time. The court for good cause shown may upon motion extend the time prescribed by these rules or by its order for doing any act, and may thereby permit an act to be done after the expiration of such time if the failure to act was excusable under the circumstances; except the court in a civil case may not extend the time for filing a notice of appeal, except as provided in Rule 5. Within the text of each motion requesting an extension of time submitted to the court for its consideration, counsel shall note that opposing counsel has been contacted concerning the motion and whether opposing counsel objects to the motion. All motions and orders for extension of time shall include a date certain on or before which date the act for which an extension of time is requested must be performed.

(c) Additional time after service by mail. Whenever a party is required or permitted to do any act within a prescribed period after service of a paper upon him and the paper is served by mail, 3 days shall be added to the prescribed period.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Rules concerning time, Title 1, ch. 1, part 3.

Time, Rule 6, M.R.Civ.P. (see Title 25, ch. 20).

Rule 22. Motions.

Unless another form is prescribed by these rules, an application for an order or other relief shall be made by filing a motion in writing for such order or relief. The motion shall state with particularity the grounds therefor and shall set forth the order or relief sought. Counsel shall also note therein that opposing counsel has been contacted concerning the motion and whether opposing counsel objects to the motion. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. The supreme court may authorize disposition of motions for procedural orders by a single judge. If a motion seeks dismissal of the appeal or other substantial relief, any party may file an answer in opposition within 7 days after service of the motion, or within such time as the court may direct. Motions, supporting papers and any response thereto may be typewritten.

At the time of filing a procedural motion counsel shall present a proposed order, together with sufficient copies for service upon all counsel of record, as well as stamped envelopes addressed to all counsel of record.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 23. Briefs.

(a) Brief of the appellant. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(2) A statement of the issues presented for review.

(3) A statement of the case. The statement shall first indicate briefly the nature of the case and its disposition in the court below, e.g.: "The plaintiff brought this action in the district court to recover damages for the wrongful death of her husband. The jury returned a verdict for the plaintiff. On motion of the defendant the trial judge entered judgment for the defendant n. o. v. on the ground that there was no evidence to support a finding of negligence on the part of the defendant. From this judgment the plaintiff appeals."

There shall follow a statement of the facts relevant to the issues presented for review, with references to the pages of the parts of the record at which material facts appear (see subdivision (e)).

(4) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the

issues presented, and the reasons therefor, with citations to the authorities, statutes and pages of the record relied on.

(5) A short conclusion stating the precise relief sought.

(6) The judgment, order, findings of fact, conclusions of law, or decision in question, together with the memorandum opinion, if any, in support thereof. If an appendix is filed pursuant to Rule 25, the foregoing may be included therein.

(b) Brief of the respondent. The brief of the respondent shall conform to the requirements of subdivision (a) (1) to (4), except that a statement of the issues or of the case need not be made unless the respondent is dissatisfied with the statement of the appellant.

(c) Reply brief. The appellant may file a brief in reply to the brief of the respondent. The reply brief must be confined to new matter raised in the brief of the respondent. No further briefs may be filed except with leave of court.

(d) References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such formal designations as "appellant" and "respondent." It promotes clarity to use names or descriptive terms such as "the employee," "the injured person," "the taxpayer," etc.

(e) References in briefs to the record. Whenever a reference is made in the briefs to the record, the reference must be to particular parts of the record, suitably designated, and to specific pages of each part, e. g., Answer, p. 7; Motion for Summary Judgment, p. 3; Transcript, p. 231. Intelligible abbreviations may be used. If reference is made to an exhibit, reference shall be made to the pages of the transcript on which the exhibit was identified, offered, and received or rejected.

(f) Reproduction of statutes, rules, regulations, etc. If determination of the issues presented requires the study of statutes, rules, regulations, etc., or relevant parts thereof, they may be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form. No such reproduction is required, unless ordered by the supreme court. When the error alleged is to the charge of the court, the brief of the parties shall set out with appropriate transcript references the part referred to totidem verbis, whether it be directed to instructions given or instructions refused.

(g) Length of briefs and costs. Except by permission of the court briefs shall not exceed 50 pages exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, etc. For purposes of assessing costs in civil cases under section 25-10-104, Montana Code Annotated, reasonable costs shall be limited as follows: For appellant's brief 50 pages; for respondent's brief 40 pages; for reply brief 15 pages. In addition, reasonable costs for briefs shall be limited to $250 for appellant's brief and $200 for respondent's brief.

(h) Briefs in cases involving cross appeals. If a cross appeal is filed, the plaintiff in the court below shall be deemed the appellant for the purposes of this rule and Rules 25 and 26, unless the parties otherwise agree or the court otherwise orders. The brief of the respondent shall contain the issues and argument involved in his appeal as well as the answer to the brief of the appellant.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References
How costs on appeal claimed, 25-10-503.

Rule 24. Brief of an amicus curiae.

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of court granted on motion. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. A motion of an amicus curiae for leave to participate in the oral argument will be granted only for extraordinary reasons.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Rule 25. The appendix to the briefs.

(a) Use of an appendix. At the time before final decision, the supreme court may order an appendix to any brief. Also, either the appellant or respondent may, if he deems it desirable, prepare, file and serve with his brief an appendix.

(b) Contents of the appendix. Unless otherwise ordered by the supreme court, an appendix shall contain: (1) the relevant docket entries in the proceeding below; (2) any relevant pleading and relevant given or refused jury instruction, finding and opinion; (3) the judgment, order, findings of fact, conclusions of law, or decision in question, together with the memorandum opinion, if any, in support thereof; and (4) such other parts of the record as any party deems it essential for the judges of the court to read in order to decide the issues presented. In designating parts of the record for inclusion in the appendix, the parties shall have regard for the fact that the entire record is always available to the court for reference or examination and shall not engage in unnecessary designation.

(c) Arrangement of the appendix. At the beginning of the appendix there shall appear a chronological list of the parts of the record which it contains. Each part of the record shall be listed by the descriptive title given to that part by the reference made to it in the briefs. The page or pages of the appendix at which each part of the record thus listed appears shall be set out opposite each listing in a column at the right, so as to permit immediate location in the appendix of the parts of the record referred to in the briefs and contained in the appendix.

The relevant docket entries in the proceeding below shall follow the list of contents. Thereafter, the parts of the record shall be set out in chronological order. The original paging of each part of the record set out in the appendix shall be indicated by placing in brackets the number of the original page at the place where that page begins. Omissions in the text of papers or of testimony must be indicated by asterisks. A question and its answer may be contained in a single paragraph.

(d) Reproduction of exhibits. Exhibits may be contained in a separate volume, suitably indexed.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References
Docket, 3-5-508.

Rule 26. Filing and service of briefs.

(a) Time for filing briefs. The appellant shall serve and file his brief within 30 days after the date on which the record is filed. The respondent shall serve and file his brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the respondent, but, except for good cause shown, a reply brief must be served and filed at least 3 days before argument.

(b) Number of copies to be filed and served. Ten copies of each brief shall be filed with the clerk of the supreme court unless otherwise ordered by the court, and one copy of each brief shall be served on counsel for each party separately represented. The clerk will not accept a brief for filing unless it is accompanied by acknowledgment or proof of service as required by Rule 20.

(c) Consequences of failure to file briefs. If an appellant fails to file his brief within the time provided by this rule, or within the time extended, a respondent may move for dismissal of the appeal. If a respondent fails to file his brief, he will not be heard at oral argument except by permission of the court.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Cross-References

Computation and extension of time, Rule 21, M.R.App.P.

Motions, Rule 22, M.R.App.P.

Rule 27. Form of briefs and other papers — duplication.

(a) Form of briefs, appendices, petitions, motions and other papers. Briefs, appendices, petitions, motions and other papers shall be produced by any standard printing process, by typewriter or by an equivalent process capable of producing a clear black image on white paper. All print must appear in at least 11 point type on opaque, unglazed paper. All of the foregoing papers shall have pages not exceeding 8 ½ by 11 inches with margins on the right side and on the top and bottom not less than 1 inch wide and on the left side not less than 1 ½ inches wide, provided, however, that papers from the proceeding below (pleadings, findings of fact and conclusions of law, judgments, exhibits and other like papers) may be (1) reproduced in their original form, size and print even though the papers exceed the foregoing size limitations, or (2) reproduced in their original form, but in a reduced size and print on pages not exceeding 8 ½ by 11 inches even though the print thereon is less than 11 point type, provided that the print is legible. Papers produced by typewriter or an equivalent process shall be double spaced except that footnotes and quoted and indented material may be single spaced. Pages shall be bound or attached on the left margin and numbered. Petitions, motions and other like papers filed with the clerk of the supreme court shall contain numbered lines.

(b) Duplication. All requirements of duplication may be satisfied by the use of any photocopy method capable of producing a clear black image on white paper, but not including ordinary carbon copy, provided, that in each instance the duplication shall conform to the requirements of subdivision (a) of this rule as to paper, size, form and pagination. All papers and attachments thereto must be legible.

(c) First page and cover. The cover of the brief of the appellant shall be blue; that of the respondent, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix, if separately printed, shall be white. Where a transparent cover is utilized, the underlying sheet must nevertheless conform to these color requirements. On the first page and cover of all papers must be stated the title of this court, the title of the case as in the court below, adding to the words "Plaintiff" and "Defendant," the words "Appellant" and "Respondent" as the case may require, the names of counsel for appellant and respondent, the title of the papers, as "Appellant's Brief," "Appendix to Appellant's Brief," etc., and the venue from which the appeal is taken.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Appeals in forma pauperis — application and manner of proceeding, Rule 18, M.R.App.P.

Rule 28. Prehearing conference.

The court may direct the attorneys for the parties to appear before the court or a judge thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceedings by the court. The court or judge shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issue to those not disposed of by admission or agreements of counsel, and such order when entered controls the subsequent course of the proceedings, unless modified to prevent manifest injustice.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Rule 29. Oral argument.

(a) Notice of hearing — postponement. The clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the hearing must be made by motion filed reasonably in advance of the date fixed for hearing.

(b) Time allowed for argument. Upon oral argument of an appeal or original proceeding, 40 minutes will be allowed appellant or applicant and 30 minutes to respondent. If counsel is of the opinion that additional time is necessary for the adequate presentation of his argument, he may request such additional time as he deems necessary by motion filed reasonably in advance of the date fixed for hearing. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(c) Order and content of argument. The appellant or applicant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case, and the closing argument shall be limited to rebuttal of respondent's argument. Counsel will not be permitted to read at length from briefs, records or authorities.

(d) Cross and separate appeals. A cross or separate appeal shall be argued with the initial appeal at a single hearing, unless the court otherwise directs. If a case involves a cross appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument at the hearing.

(e) Nonappearance of counsel — failure to file briefs. If counsel for a party fails to appear to present argument, the court may hear argument on behalf of a party whose counsel is present, and the case will be decided on the briefs and the argument heard. If no counsel appear for any party, the case will be decided on the briefs unless the court shall otherwise order.

(f) Submission on briefs. By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

(g) Use of physical exhibits at hearing — removal. If physical exhibits other than documents are to be used at the hearing, counsel shall arrange to have them placed in the courtroom before the court convenes on the date of the hearing. After the hearing counsel shall cause the exhibits to be removed from the courtroom unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Cross-References

No argument on appeals from injunction orders, Rule 40, M.R.App.P.

Rule 30. Entry and notice of orders.

The notation of an order in the docket constitutes entry thereof. Upon entry of an order, the clerk shall promptly mail to all parties a copy of the order, and notice of the date of entry thereof.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 31. Interest on judgments.

If a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was rendered or made in the district court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the district court, the mandate shall contain instructions with respect to allowance of interest.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Cross-References

Clerk to include interest in judgment, 25-9-204.

Amount of interest, 25-9-205.

Interest on torts, 27-1-210.

Rule 32. Damages for appeal without merit.

If the supreme court is satisfied from the record and the presentation of the appeal in a civil case that the same was taken without substantial or reasonable grounds, such damages may be assessed on determination thereof as under the circumstances are deemed proper.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 33. Costs in civil cases.

(a) Costs on appeal. Costs on appeal in civil cases will be taxed as provided by section 25-10-104, Montana Code Annotated, and if not otherwise provided by the court in its decision, will automatically be awarded to the successful party against the other party. All costs on appeal shall be claimed as provided by section 25-10-503, Montana Code Annotated.

(b) Costs of briefs and appendices. The cost of printing or otherwise producing briefs and appendices shall be taxable at rates not higher than specified in Rule 23(g).

(c) Other costs taxable. Costs incurred in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing notice of appeal shall be taxed in the district court as costs of the appeal in favor of the party entitled to costs under this rule.

(d) Costs in original proceedings. Costs in original proceedings, including reviews other than by appeal, will be taxed as provided by Montana Code Annotated, sections 25-10-101, 25-10-102, 25-10-103, and 25-10-105, and if not otherwise provided by the court in its decision, will be awarded to the successful party against the other party; provided, however, that costs awarded to plaintiff or relator in special proceedings to review inferior court rulings, orders or judgments will ordinarily be assessed against the real party in interest, namely, the party interested in upholding the inferior court's action, rather than against the state, county, municipality, subdivision, judge or justice.

(e) Unnecessary costs. Whenever it appears that the successful party has caused any redundant, useless or unnecessary matter to be incorporated in the record, briefs, or appendices, whether on appeal or in a special proceeding, he shall not recover as part of his costs so much of the expense as is occasioned thereby.

(f) Notation by clerk. The clerk of the supreme court shall, in all civil cases, include in the order of judgment of affirmance, reversal or modification on appeal, or for the issuance of a peremptory writ in an original proceeding, and in the remittitur, peremptory writ or judgment, a clause awarding the costs in accordance with this rule or the special order of this court, to be recovered after claim and ascertainment or taxation thereof in the manner prescribed by law; and the clerk shall also furnish therewith an itemized statement of such costs as have been paid by him.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-8, Sept. 10, 1968, eff. Jan. 1, 1969; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

When costs allowed, of course, to plaintiff, 25-10-101.

When costs allowed, of course, to defendant, 25-10-102.

Rule 34. Petitions for rehearing.

When, in appeals or special proceedings, it is ordered that remittitur, peremptory writ or judgment issue forthwith, no petition for rehearing will be entertained. In all other cases a petition for rehearing may be filed within 10 days after the decision of the supreme court has been rendered, unless the time is shortened or enlarged by order, and the adverse party shall have 7 days thereafter in which to serve and file his objections thereto. Extensions of time will be granted only upon showing of unusual merit, and in no event in excess of 10 days. A petition for rehearing may be presented upon the following grounds and none other: That some fact, material to the decision, or some question decisive of the case submitted by counsel, was overlooked by the court, or that the decision is in conflict with an express statute or controlling decision to which the attention of the court was not directed. Oral argument in support of the petition will not be permitted. Six copies of the petition and six copies of objections thereto, which may be in typewritten form, shall be filed with the clerk.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Cross-References

Remittitur must be certified to the Clerk of District Court, Rule 16, M.R.App.P.

Rule 35. Notice and copy of decision — remittitur — mandate from United States supreme court.

(a) Notice and copy of decision to be furnished. Upon the decision of a cause, notice thereof, together with a copy of the court's written decision, will immediately be mailed to counsel for each party.

(b) Remittitur — when issued — when copy of opinion to accompany. Remittitur may, in cases where it is deemed proper, be ordered forthwith; otherwise the same shall be issued promptly upon expiration of time for filing petition for rehearing, or, if such petition is filed, then upon the denial thereof, unless a modification of the decision is made which permits a further petition for rehearing. A copy of the opinion must accompany the remittitur when the judgment or order of the trial court is reversed or modified and the case remanded for further proceedings other than the entry of a final judgment or order terminating the proceedings in the trial court.

(c) Mandate from United States supreme court — procedure thereon. Upon receipt by the clerk of the supreme court of Montana of a mandate from the supreme court of the United States in any case at law or in equity theretofore taken from the supreme court of Montana to the supreme court of the United States, it shall be the duty of said clerk forthwith to issue under his hand and the seal of the supreme court of Montana a remittitur to the district court by which the judgment was rendered, commanding such court to take such action in the premises as by the mandate shall be proper, and said remittitur shall also contain therein a recital in haec verba of the said mandate. In civil cases all the costs subsequent to the appeal from said district court shall be taxed in such remittitur.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Remittitur must be certified to the Clerk of District Court, Rule 16, M.R.App.P.

Rule 36. Voluntary dismissal.

If the parties to an appeal or other proceeding shall sign and file with the clerk an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the clerk shall enter the case dismissed, and shall give to each party a copy of the agreement filed; but no mandate or other process shall issue without an order of the court. An appeal may be dismissed on motion of the appellant upon such terms as to costs as may be agreed upon by the parties or fixed by the court. If an appeal has not been docketed the appeal may be dismissed by the court from which the appeal was taken upon the filing in that court of a stipulation for dismissal signed by all parties, or upon motion and notice by the appellant. The clerk of the district court shall mail a copy of the order of dismissal to the clerk of the supreme court.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Effect of dismissal, Rule 12, M.R.App.P.

Motions for dismissal, Rule 22, M.R.App.P.

Consequences of failure to file brief, Rule 26(c), M.R.App.P.

Rule 37. Substitution of parties in civil cases.

(a) Death of a party. If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the supreme court in a civil case, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the clerk of the supreme court. The motion of a party shall be served upon the representative in accordance with the provisions of Rule 20. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the supreme court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the supreme court in accordance with this subdivision. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his personal representative, or, if he has no personal representative, by his attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the supreme court in accordance with this subdivision.

(b) Substitution for other causes. If substitution of a party in the supreme court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subdivision (a).

(c) Public officers — death or separation from office.

(1) When a public officer is a party to an appeal or other proceeding in the supreme court in his official capacity and during its pendency dies, resigns or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding he may be described as a party by his official title rather than by name; but the court may require his name to be added.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Vacancy and succession, Title 2, ch. 16, part 5.

Substitution of parties, Rule 25, M.R.Civ.P. (see Title 25, ch. 20).

Right to bring action and assert defense, Title 27, ch. 1, part 5.

When a party dies before action commenced, 27-2-404.

Rule 38. Cases involving constitutional questions where the state is not a party.

It shall be the duty of counsel who challenges the constitutionality of any act of the Montana legislature in any suit or proceeding in the supreme court to which the state of Montana, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, upon the filing of the record to give immediate notice in writing to the court of the existence of said question, specifying the section of the code or the chapter of the session law to be construed. The clerk shall thereupon certify such fact to the attorney general of the state of Montana.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Cross-References

Service of process on state, 2-9-313.

Duties of Attorney General, 2-15-201, 2-15-501.

Notice to Attorney General, Title 25, ch. 1, part 5.

Service required upon Attorney General, Rule 4D(2)(h), M.R.Civ.P. (see Title 25, ch. 20).

Attorney General to be notified of constitutional questions, Rule 24(c), M.R.Civ.P. (see Title 25, ch. 20).

Necessary parties, 27-8-301.

Rule 39. Calendar — withdrawal of records.

(a) Placing causes upon calendar. All causes shall be classified as provided in the Montana Supreme Court 1982 Internal Operating Rules as the same may be amended by the court.

(b) Setting causes for argument. Causes on the calendar upon which oral argument is allowed will be set for argument by the court in the chronological order in which they have been placed on the calendar, except for such causes as are determined entitled to precedence or as otherwise ordered by the court. Oral arguments will not be heard during the months of July and August.

(c) Advancement of causes. In calendaring appeals of civil cases from orders dissolving, refusing to dissolve, granting or refusing to grant writs of injunction, appeals from orders dissolving or refusing to dissolve attachments, appeals from orders appointing or refusing to appoint receivers, appeals from orders or judgments holding appellant in custody, and workmen's compensation appeals, are entitled to precedence and will, upon motion of either party, be advanced on the calendar. In calendaring appeals of criminal cases, causes against defendants held in custody will be set for argument by the court in advance of causes against defendants on bail unless for good cause the court otherwise orders.

(d) Permission to take record from clerk's office. The records and other papers of the supreme court shall not be taken therefrom except by counsel pursuant to a written order of a justice of the court, which order shall specify the time the same may be retained out of the clerk's office; provided, that the court or a justice thereof may require the same to be returned within a shorter period upon notice. The clerk shall preserve each order and counsel's receipt until the papers therein mentioned shall be returned.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Cross-References

Receivers, Rule 66, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 20.

Arrest and bail in civil actions, Title 27, ch. 16.

Prejudgment attachment, Title 27, ch. 18.

Injunctions, Title 27, ch. 19.

Workers' compensation, Title 39, ch. 71.

Rule 40. Appeals from injunction orders.

Upon appeal from an order dissolving or refusing an injunction, if the appellant desires to continue in force the injunction order dissolved by the district court, or to obtain such injunction order pending the appeal, he shall apply to the district court under Rule 62 of the Montana Rules of Civil Procedure. In the event the relief there requested be not granted he may file in the supreme court his sworn application, setting forth the proceedings appealed from and the relief desired, and present with it to the supreme court, a verified copy of the affidavits or evidence used on the hearing in the district court. Such application will be heard ex parte and without argument, and the court, upon such record will make such order in the premises as may be proper.

History: **En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.**

Cross-References

Injunctions, 3-2-205; Title 27, ch. 19.

Rule 41. Renumbered Rule 51. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 42. Renumbered Rule 52. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 43. Renumbered Rule 53. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 44. Certification of questions of law.

(a) Power to answer. Whenever in an action pending in a United States court it shall appear that there is a controlling question of Montana law as to which there is a substantial ground for difference of opinion, a judge of the United States court wherein the action is pending may certify that the question upon which adjudication is sought is controlling in the federal litigation and the adjudication by the supreme court of Montana will materially advance ultimate termination of the federal litigation. Rendition of an answer by the supreme court of Montana to any such question of law certified to it is discretionary with the supreme court of Montana, and it may refuse to render an answer if it appears that there is another ground for determination of the case pending in the United States court, or if the question for adjudication is not clearly defined, or if the question is not adequately briefed or argued.

(b) Method of invoking. This rule may be invoked by a certification order of a United States court filed with the supreme court of Montana.

(c) Contents of certification order. A certification order shall set forth

(1) the questions of law to be answered; and

(2) a statement of all facts relevant to the questions certified and showing fully the nature of the controversy in which the questions arose.

(d) Preparation of certification order. The certification order shall be prepared by the certifying court, signed by the judge presiding at the hearing, and forwarded to the supreme court by the clerk of the certifying court under its official seal. The supreme court may require the original or copies of all or of any portion of the record before the certifying court to be filed with the certification order, if, in the opinion of the supreme court, the record or portion thereof may be necessary in answering the questions.

(e) Costs of certification. Fees and costs shall be the same as in civil appeals docketed before the supreme court and shall be equally divided between the parties unless otherwise ordered by the certifying court in its order of certification.

(f) If any party to the action believes that the supreme court should refuse to answer the certification order, such party may file a motion to such effect within ten days after such party receives notice that the certification order has been filed with the supreme court. Thereafter Rule 22 will govern further procedure as to such motion.

(g) Briefs and arguments. Proceedings in the supreme court shall be those provided in the foregoing rules governing briefs and arguments.

(h) Opinion. The written opinion of the supreme court stating the law governing the questions certified shall be sent by the clerk under the seal of the supreme court to the certifying court and to the parties.

History: En. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rules 45 through 50 reserved.

Rule 51. Statutes and rules amended.

[This rule amended Rule 72 of the Montana Rules of Civil Procedure, and Montana Code Annotated, sections 25-9-301, 25-12-101, 25-12-102, 25-33-101, 25-33-205(2), 25-33-206, and 70-30-312. For text of amendments see the designated sections.]

History: Redes. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Rule 52. Applicability in general.

(a) Special statutory proceedings. The statutory proceedings listed in Table A of the Montana Rules of Civil Procedure and any other special statutory proceedings, whether or not listed in said Table A, are excepted from these rules insofar as they are inconsistent or in conflict with the procedure and practice provided by these rules.

(b) Appeals to district courts. These rules do not supersede the provisions of statutes relating to appeals to or review by the district courts, which shall govern procedure and practice relating thereto insofar as they are not inconsistent with these rules.

(c) Rules incorporated into statutes. Where any statute heretofore or hereafter enacted, whether or not applicable to a special statutory proceeding or listed in any table appended hereto, provides that any act in a proceeding in a district court or in the Montana supreme court shall be done in the manner provided by law or as in an action or as provided by any statute superseded by these rules, such act shall be done in accordance with these rules and the procedure thereon shall conform to these rules, insofar as practicable.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. and redes. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Compiler's Comments

Table A: The Code Commissioner has not reprinted Table A in the MCA because it was never intended to be a complete listing, has not been updated since 1963, contains a high percentage of repealed sections, and is generally obsolete and not very useful. Interested persons may find it in the 1964 main volume of R.C.M. 1947, Vol. 7.

Rule 53. Title — effective date — statutes superseded.

(a) Title. These rules shall be known as the Montana Rules of Appellate Procedure and may be cited as M.R.App.P.

(b) Effective date and application to pending proceedings. These rules will take effect on January 1, 1966. They govern all appeals and original proceedings brought after they take effect, and also all further proceedings in appeals and original proceedings then pending, except to the extent that in the opinion of the supreme court their application in a particular appeal or original proceeding pending when the rules take effect would not be feasible, or would work injustice, in which event the procedure existing at the time the appeal or original proceeding was brought applies.

(c) Statutes and rules superseded. Upon the taking effect of these rules all statutes and rules, and parts thereof, in conflict herewith, and the statutes and rules listed in Tables A, B, C, and D are superseded in respect of practice and procedure on appeals from the district courts to the supreme court and in original proceedings brought in the supreme court.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. and redes. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

Compiler's Comments

Tables A, B, C, and D: Tables A, B, C, and D can be found with the annotations for this rule.

Appendix of Forms

Form 1.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE STATE OF MONTANA FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

IN THE DISTRICT COURT OF THE .... JUDICIAL DISTRICT
OF THE STATE OF MONTANA,
IN AND FOR THE COUNTY OF ....

A.B., Plaintiff
vs. Notice of Appeal
C.D., Defendant

Notice is hereby given that C.D., defendant above-named, hereby appeals to the supreme court of the state of Montana (from the final judgment) (from the order (describing it)) entered in this action on the .... day of ...., 19...

(S) ....
....
Attorney for C.D.
(Address)

Form 2.

AFFIDAVIT TO ACCOMPANY MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

IN THE DISTRICT COURT OF THE .... JUDICIAL DISTRICT
OF THE STATE OF MONTANA,
IN AND FOR THE COUNTY OF ....

A.B., Plaintiff AFFIDAVIT IN SUPPORT OF APPLICATION
vs. TO PROCEED ON APPEAL WITHOUT
C.D., Defendant PREPAYMENT OF COSTS

I, ..., being first duly sworn, depose and say that I am the .... in the above-entitled case; that in support of my application to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

....

....

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

a. If the answer is yes, describe each source of income, and state the amount received from each during the past 12 months.

3. Do you own any cash or checking or savings account?

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

....

Subscribed and Sworn to before me
this .... day of ...., 19....

....
Notary Public

Let the applicant proceed without prepayment of costs.

....
District Judge

CHAPTER 22

MONTANA JUSTICE COURTS RULES OF CIVIL PROCEDURE

I. Scope of Rules

Rule
1. Scope of rules.

II. Action — Service

2. One form of action.

3. Commencement of action.
4. Persons subject to jurisdiction — process — service.
5. Service and filing of pleadings and other papers.
6. Time.

III. Pleadings and Motions

7. Pleadings allowed.
8. Amendment of pleadings.
9. Motions and other papers.

IV. Parties

10. Naming of parties to action.
11. Substitution of parties.
12. Joinder of claims and parties necessary for just adjudication.

V. Discovery

13. Discovery.

VI. Jury Trial

14. Right to jury trial.
15. Jury.
16. Order of trial.

VII. Judgment

17. Entry of judgment.
18. Relief from judgment.

VIII. Execution

19. Execution.

IX. Appeal

20. Appeal to district court.

I. Scope of Rules

Rule 1. Scope of rules. These rules govern the procedure in the justice courts of the state of Montana in all suits of a civil nature except in small claims actions and where otherwise provided by law. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

History: Ad. Sup. Ct. Ord. July 15, 1982, eff. Oct. 1, 1982.

Compiler's Comments

Adoption and Amendment of Rules: These rules were adopted, effective on October 1, 1982, by a July 15, 1982, order of the Montana Supreme Court. They were amended by supreme court orders of August 11, 1982, and October 14, 1982.

Conflicts With Statutes: The court order adopting these rules directed the Commission on Courts of Limited Jurisdiction to prepare a list of statutes superseded by the rules. The commission's suggestions follow.

The sections that follow should be repealed because they are redundant with or conflict with the new rules:

3-15-107	Redundant with Rule 15A
3-10-305	Redundant with Rule 3A
3-10-306	Redundant with Rule 4C
25-31-114	Redundant in part and conflicts in part with Rule 13
25-31-116	Redundant with Rule 17A(1)

25-31-201	Redundant with Rule 3A
25-31-202	Redundant with Rule 4D(9)
25-31-203	Redundant with Rule 4D(9)
25-31-204	Redundant with Rule 4D(9)
25-31-401	Redundant with Rules 3 and 7A
25-31-402	Redundant with Rule 4C
25-31-403	Redundant with Rule 4B(2)
25-31-404	Redundant with Rule 4C(2)
25-31-406	Conflicts with Rules 4C(2) and 5A
25-31-407	Redundant with Rule 4D(2), (9) and (10)
25-31-408	Redundant with Rule 4D(1)
25-31-501	Conflicts with Rule 7D(1)
25-31-502	Conflicts with Rule 7
25-31-503	Redundant with Rule 7
25-31-504	Redundant with Rules 3 and 7A
25-31-505	Redundant with Rule 7B
25-31-506	Redundant with Rule 7C
25-31-507	Redundant with Rule 7D(3)
25-31-511	Redundant with Rule 7A
25-31-521	Conflicts with Rule 8A
25-31-522	Conflicts with Rules 5A and 8B
25-31-804	Redundant with Rule 14C
25-31-811	Redundant with Rule 14E
25-31-812	Redundant with Rule 15D(2)
25-31-901	Redundant with Rule 17A(5)
25-31-902	Redundant with Rule 17A(5)
25-31-903	Redundant with Rules 3B and 17A(2)
25-31-904	Redundant with Rule 17A(4)
25-31-905	Redundant with Rule 17C
25-31-907	Redundant with Rule 17A(3)
25-31-911	Redundant with Rule 17D
25-31-912	Redundant with Rule 17D
25-31-913	Redundant with Rule 17D
25-31-915	Redundant with Rule 18
25-31-1001	Redundant with Rule 17B
25-31-1003	Redundant with Rule 17B
25-31-1004	Redundant with Rule 14F(3)
25-31-1101	Redundant with Rule 19B
25-31-1102	Redundant with Rule 19C
25-31-1103	Redundant with Rule 19D
25-31-1105	Redundant with Rule 19E

Sections 25-33-201 and 25-33-205, MCA, should be amended so as to be consistent with Rule 20.

The following sections are not specifically in conflict or redundant with the Justice Court Rules of Civil Procedure, but could be considered for repeal:

25-31-101
25-31-102
25-31-111
25-31-112
25-31-113
25-31-523
25-31-801
25-31-802
25-31-906
25-31-914
25-31-1005
25-31-1106
25-31-115
Title 25, Ch. 31, Part 3
25-31-405
25-31-409
25-31-512
Title 25, Ch. 31, Part 6
Title 25, Ch. 31, Part 7
25-31-803
25-31-908
25-31-1002
25-31-1104
25-31-1111

II. Action — Service

Rule 2. One form of action. There is one form of civil action in the justice courts to be known as a "civil action."

History: Ad. Sup. Ct. Ord. July 15, 1982, eff. Oct. 1, 1982.

Rule 3. Commencement of action. A civil action is begun by filing a complaint with the justice court. Either a copy of the account, note, bill, bond, or instrument upon which the action is brought with a statement of the amount due thereon, or a concise statement in writing of the cause of action is deemed a complaint. The party or his attorney shall sign the complaint.

A. PLACE OF TRIAL. The proper county for the trial of an action in justice court, subject to the right to change the place of trial, is determined as follows:

(1) In any county in which the defendant or any one of the defendants, if there be more than one, resides or may be found and served with summons personally.

(2) When the defendant is a nonresident of the state, in any county of the state.

(3) When the parties voluntarily appear and plead without summons, in any county of the state.

B. IMPROPER PLACE OF TRIAL. When the county in which the complaint is filed is not the proper county for a place of trial, the complaint shall be dismissed.

History: Ad. Sup. Ct. Ord. July 15, 1982, eff. Oct. 1, 1982.

Rule 4. Persons subject to jurisdiction — process — service. A. PERSON. As used in this rule, the word "person," whether or not a citizen or resident of this state and whether or not organized under the laws of this state, includes an individual whether operating in his own name or under a trade name, an individual's agent or personal representative, a corporation, a business trust, an estate, a trust, a partnership, an unincorporated association, and any two or more persons having a joint or common interest or any other legal or commercial entity.

B. JURISDICTION OF PERSONS.

(1) Subject to jurisdiction. All persons are subject to the jurisdiction of a justice court who are found within the county or who can be served as provided in these rules.

(2) Acquisition of jurisdiction. A justice court may acquire jurisdiction over any person through service of process as provided in these rules, or by the voluntary appearance in an action by any person either personally, or through an attorney, or through any other authorized officer, agent or employee.

C. PROCESS.

(1) Summons — issuance. Upon the filing of the complaint, or at any time within one year, the justice shall issue a summons upon request of a plaintiff. Separate or additional summons shall be issued against any parties designated in the original action or against any additional parties who may be brought into the action upon request.

(2) Summons — form. The summons must be directed to the defendant and signed by the justice and must contain:

(a) The title of the court, the name of the county and city in which the action is commenced, and the names of the parties thereto;

(b) A sufficient statement of the cause of action, in general terms, to apprise the defendant of the nature of the claim against him, but a copy of the complaint in the action, when served with a copy of the summons upon defendant in lieu of said statement is sufficient;

(c) A direction that the defendant appear and file a written answer in the justice court within ten days after service of summons and complaint, exclusive of the day of service and serve a copy upon the plaintiff or his attorney;

(d) A statement that upon failure to appear and answer or assert a counterclaim, the plaintiff may take judgment against the defendant by default for the relief demanded in the complaint;

(e) The name and business address of the attorney, if any, representing plaintiff shall be endorsed upon the summons.

D. SERVICE OF PROCESS.

(1) By whom served. Service of all process shall be made by a sheriff of the county where the party to be served is found, by his deputy, by a constable authorized by law, or by any other person over the age of 18 not a party to the action.

(2) Personal service within the state. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(a) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given.

(b) Upon a minor over the age of 14 years, by delivering a copy of the summons and complaint to him personally, and by leaving a copy thereof at his dwelling house or usual place of abode with some adult of suitable discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

(c) Upon a minor under the age of 14 years, by delivering a copy of the summons and complaint to his guardian, if he has one within the county, and if not, then to his father or mother or other person or agency having his care or control, or with whom he resides, or if service cannot be made upon any of them, then as provided by order of the court.

(d) Upon a person who has been adjudged of unsound mind by a court of this state, or for whom a guardian has been appointed in this state by reason of incompetency, by delivering a copy of the summons and complaint to his guardian, if there be a guardian residing in this state appointed and acting under the laws of this state. If there be no such guardian, the court shall appoint a guardian ad litem for the incompetent person, with or without personal service on the incompetent, as the court may direct. When a party is alleged to be of unsound mind, but has not been so adjudged by a court of this state, such party may be brought into court by service of process personally upon him. The court may also stay any action pending against the person on learning that such person is of unsound mind.

(e) Upon a domestic corporation, partnership or other unincorporated association, or upon a foreign corporation, partnership or other unincorporated association, established by the laws of any other state or country, and having a place of business within this state or doing business herein either permanently or temporarily, or which was doing business herein either permanently, or temporarily at the time the claim for relief accrued: (i) by delivering a copy of the summons and complaint to an officer, director, superintendent or managing or general agent, or partner, or associate for such corporation, partnership, or association; or by leaving such copies at the office or place of business of the corporation, partnership, or association within the state with the person in charge of such office; or (ii) by delivering a copy of the summons and complaint to the registered agent of said corporation named on the records of the secretary of state, or to any other agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, partnership, or association, provided that if the agent or attorney in fact is one designated by statute to receive service, such further notice as the statute requires shall also be given; or (iii) if the sheriff shall make return that no person upon whom service may be made can be found in the county, then service may be made by leaving a copy of the summons and complaint at any office of the corporation, partnership, or unincorporated association within this state with the person in charge of such office; or (iv) if the suit is against a corporation whose charter or right to do business in the state has expired or been forfeited, by delivering a copy thereof to any one of the persons who have become trustees for the corporation and its stockholders or members.

(f) When a claim for relief is pending in justice court of this state against a corporation organized under the laws of this state, or against a corporation organized under the laws of any other state or country, that has filed a copy of its charter in the office of the secretary of state of Montana and qualified to do business in Montana; or against a corporation organized under the laws of any other state or country which is subject to the jurisdiction of the justice courts of this state under the provisions of rule 4B, even though such corporation has never qualified to do business in Montana; or against a national banking corporation which, through insolvency or lapse of charter, has ceased to do business in Montana; and none of the persons designated in D(2)(e) can with the exercise of reasonable diligence be found within Montana, the party causing summons to be issued shall exercise reasonable diligence to ascertain the last known address of any such person. Upon the filing with the justice court in which the claim for relief is pending of an affidavit reciting that none of the persons designated in D(2)(e) can after due diligence be found within Montana upon whom service of process can be made, and reciting the last known address of any such person, or reciting that after the exercise of reasonable diligence no such address for any such person could be found, and there has also been deposited with the justice court the sum to be paid to the secretary of state as a fee for each of said defendants for whom the secretary of state is to receive said service, then the justice shall issue an order directing process to be served upon the secretary of state of the state of Montana or, in his absence from his office, upon the deputy secretary of state of the state of Montana. Such affidavit shall be sufficient evidence of the diligence of inquiry made by affiant, if the affidavit recites that diligent inquiry was made, and the affidavit need not detail the facts constituting such inquiry. The justice shall mail to the secretary of state the original summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee for service, to the office of the secretary of state. The secretary of state shall mail copy of the summons and complaint by certified or registered mail with a return receipt requested to the last known address of any of the persons designated in D(2)(e), if known, or, if none such is known and it is a corporation not organized in Montana, to the secretary of state of the state in which such corporation was originally incorporated, if known; and the secretary of state shall make his return as hereinafter provided under rule 4D(4). When service is so made, it shall be deemed personal service on such corporation, and the said secretary of state, or his deputy when the secretary is absent from his office, is hereby appointed agent of such corporation for service of process in cases hereinbefore mentioned. In any action where due diligence has been exercised to locate and serve any of the persons designated in D(2)(e), service shall be deemed complete upon said corporation regardless of the receipt of any return receipt or advice of refusal of the addressee to receive the process mailed, as is hereinafter required by 4D(4).

When the service of process is made as herein provided, and there is no appearance thereafter made by any attorney for such corporation, service of all other notices required by law to be served in such action may be served upon the secretary of state.

(g) Upon a city, village, town, school district, county, or public agency or board of any such public bodies, by delivering a copy of the summons and complaint to any commissioner, trustee, board member, mayor or head of the legislative department thereof.

(h) Upon the state, or any state board or state agency, by delivering a copy of the summons and complaint to the governor, or to any member of such state board or state agency, and also by delivering an additional copy of the summons and complaint to the attorney general.

(i) Upon an estate by delivering a copy of the summons and complaint to the personal representative thereof; upon a trust by delivering a copy of the summons and complaint to any trustee thereof.

(3) (a) Other service. All process in any form of action shall be served in the manner specified in this rule with the exception that whenever a statute of this state or an order of the court of a citation by the court made pursuant thereto provides for the service of a notice or of an order or of a citation in lieu of summons upon any person, service shall be made under the circumstances and in the manner prescribed by the statute or order or citation; and with the further exception that all persons are required to comply with the provisions of sections 33-1-603, 33-1-613, 33-1-614, 33-2-314, and 33-2-315, MCA, when the action pertains to the provisions of such sections.

(b) Service by publication. There shall be no service of process by publication in justice court.

(4) (a) Service on secretary of state. Whenever service is to be made upon certain corporations as provided in D(2)(f), the requirements of said D(2)(f) must be complied with. In all other cases, unless otherwise provided by statute, whenever the secretary of state of the state of Montana has been appointed, or is deemed by law to have been appointed, as the agent to receive service of process for any person who cannot with due diligence be found or served personally within Montana, the party, or his attorney, shall make an affidavit stating the facts showing that the secretary of state is such agent, and stating the residence and last known post office address of the person to be served, and shall file such affidavit with the justice court in which such claim for relief is pending, accompanied by sufficient copies of the affidavit, summons and complaint for service upon the secretary of state, and there has also been deposited with the justice court in which said claim for relief is pending the sum to be paid to the secretary of state as a fee for each of said defendants for whom the secretary of state is to receive such service; then the justice shall forward the original summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, and one copy of the summons attached to copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee, to the office of the secretary of state.

Such service on the secretary of state shall be sufficient personal service upon the person to be served, provided that notice of such service and a copy of the summons and complaint are forthwith sent by registered or certified mail by the secretary of state or his deputy to the party to be served at his last known address, marked "deliver to addressee only" and "return receipt requested," and provided further that such return receipt shall be received by the secretary of state purporting to have been signed by said addressee, or the secretary of state shall be advised by the postal authority that delivery of said registered or certified mail was refused by said addressee, except in those cases where compliance is excused under the provisions of D(2)(f). The date upon which the secretary of state receives said return receipt, or receives advice by the postal authority that delivery of said registered or certified mail was refused by the addressee, shall be deemed the date of service. As an alternative to sending the summons and complaint by registered or certified mail, as herein provided, the secretary of state, or his deputy, may cause copy of the summons and complaint to be served by any qualified law enforcement officer, in accord with the procedure set out in D(1), (2) or (3) of this rule.

The secretary of state, or his deputy, shall make an original and two copies of an affidavit reciting: (a) the fact of service upon him by the justice court, including the day, and hour of such service; (b) the fact of his mailing a copy of the summons and complaint and notice to the defendant, including the day and hour thereof, except in those cases where he is relieved from doing so under the provisions of D(2)(f) in which cases his affidavit shall so recite, and (c) the fact of his receipt of a return from the postal department including the date, and hour, thereof, and attaching to his affidavit a copy of such return. The secretary of state, or his deputy, shall then transmit the original summons, and his original affidavit along with copy of his notice to the defendant where such notice was required, to the justice court in which the claim for relief is pending, and it shall be filed in the claim for relief by said justice; and the secretary of state shall also transmit to the attorney for the plaintiff copy of the affidavit of the secretary of state along with copy of the notice to the defendant where such notice was required. The secretary of state shall keep on file in his office a copy of the summons, a copy of the affidavit served on him by the justice, and a copy of the affidavit executed and issued by the secretary of state.

(b) Continuance to allow defense. In any of the cases provided for in rule 4D(2)(f), the court in which the claim for relief is pending may order such continuance as may be necessary to afford reasonable opportunity to defend the action.

(5) Amendment. At any time, in its discretion, and upon such notice and terms as it deems just, the court may allow any process or proof of service thereof to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(6) Proof of service. Proof of the service of the summons and of the complaint or notice, if any, accompanying the same must be as follows:

(a) If served by the constable, or other officer, his certificate thereof.

(b) If by any other person, his affidavit thereof.

(c) The written admission of the defendant showing the date and place of service.

The certificate or affidavit of service mentioned in this subdivision must state the time, date, place, and manner of service.

(7) Contents of affidavit of service. Whenever a process, pleading, order of court, or other paper is served personally by a person other than the sheriff, constable or person designated by law, the affidavit of service when made, shall state that the person so serving is of legal age, and the date and place of making the service. It also shall state that the person making such service knew the person served to be the person named in the papers served and the person intended to be served.

(8) Procedure where only part of defendants are served. If the summons is served on one or more, but not all, of the defendants, the plaintiff may proceed to trial and judgment against the defendant or defendants on whom the process is served, and may at any time thereafter have a summons against the defendant not served with the first process to cause him to appear in said court to show cause why he should not be made a party to such judgment. Upon such defendant being duly served with such process, the court shall hear and determine the matter in the same manner as if such defendant had been originally brought into court, and such defendant shall also be allowed the benefit of any payment or satisfaction which may have been made on the judgment before recovered.

(9) The summons cannot be served out of the county of the justice before whom the action is brought, except:

(a) when the action is brought upon a joint contract or obligation of two or more persons who reside in different counties and the summons has been served upon the defendant resident of the county, in which case the summons may be served upon the other defendant out of the county;

(b) when an action is brought against a party who has contracted to perform an obligation at a particular place and resides in a different county, in which case summons may be served in the county where he resides; and

(c) where an action is brought for an injury to person or property and the defendant resides in a different county, in which case summons may be served in the county where defendant resides.

(10) When a summons issued by a justice of the peace is to be served out of the county in which it was issued, the summons shall have attached to it a certificate, under seal by the county clerk of the county in which it was issued, to the effect that the person issuing the same was an acting justice of the peace at the date of the summons.

History: Ad. Sup. Ct. Ord. July 15, 1982, eff. Oct. 1, 1982.

Rule 5. Service and filing of pleadings and other papers. A. WHEN MADE. Whenever a pleading permitted by Rule 7, M.J.R.Civ.P. is filed and served, the party served shall file and serve any further written pleading within ten days after service unless the time period is extended by operation of Rule 6B, M.J.R.Civ.P.

B. HOW MADE. Whenever under these rules service is required or permitted to be made upon a party represented therein by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the justice. Service shall be made by delivering a copy to the attorney, or to the party if so ordered, by mailing it to him at his last known address or, if no address is known, by delivering it to the justice. Delivery of a copy within this rule means handing it to the attorney, or the party if so ordered, or leaving it at his office with a person in charge thereof or if there is no one in charge leaving it in a conspicuous place therein or if the office is closed or the person to be served has no office by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service of mail is complete upon mailing.

C. PROOF OF SERVICE. Proof of service shall be made by an affidavit of the party or his attorney making service, or by the certificate of his attorney making service or by an acknowledgment in writing from the party or attorney served, and such affidavit, certificate or acknowledgment shall be filed. Failure to make proof of service does not affect the validity of the service.

History: Ad. Sup. Ct. Ord. July 15, 1982, eff. Oct. 1, 1982.

Rule 6. Time. A. COMPUTATION. In computing any period of time prescribed or allowed by these rules, by order of court or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday.

B. EXTENSION. When by these rules or by a notice given under them or by order of court an act is required or allowed to be done at or within a specified time, the justice for cause shown may extend the period if a motion therefor is made before the expiration of the period originally prescribed or extended by previous permission of the court, or after expiration of the specified period where failure to act was the result of excusable neglect.

C. ADDITIONAL TIME AFTER SERVICE BY MAIL. Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after service of a notice or other paper upon him and the notice or other paper is served by mail, 3 days shall be added to the prescribed period.

History: Ad. Sup. Ct. Ord. July 15, 1982, eff. Oct. 1, 1982.

III. Pleadings and Motions

Rule 7. Pleadings allowed. In justice court there may be a complaint, answer and counterclaim. No other pleadings shall be allowed, except that the court may order a reply to an answer or a counterclaim.

A. COMPLAINT. The complaint is a concise statement in writing of the facts constituting the plaintiff's cause of action or a copy of the account, note, bill, bond, or instrument upon which the action is based.

B. ANSWER. The answer may contain a general denial of any or all of the material facts stated in the complaint which the defendant believes to be untrue and also a statement, in a plain or direct manner, of any other facts containing a defense or counterclaim upon which an action might be brought by the defendant against the plaintiff in a justice court.

C. COUNTERCLAIM. A defendant may file a copy of an account, note, bill, bond, or other instrument with his answer as a counterclaim. Any counterclaim arising out of an action or occurrence must be stated or the defendant waives his right to maintain an action for it against the plaintiff at a later time. Such claim need not be stated, however, if it is the subject of another pending action.

D. GENERAL RULES OF PLEADING.

(1) Form — pleadings in justice court. All pleadings must be in writing and filed with the court; and need not be in any particular form, but must be such as to enable a person of common understanding to know what is intended.

(2) Effect of failure to deny. Allegations in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. Statements of fact in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(3) New matter. New matter in the answer or counterclaim is deemed denied by the plaintiff.

(4) Signing of pleadings. Every pleading of a party represented by an attorney shall be signed by that attorney and shall state his address. A party who is not represented by an attorney shall sign his pleading and state his address.

History: Ad. Sup. Ct. Ord. July 15, 1982, eff. Oct. 1, 1982; amd. Sup. Ct. Ord. Aug. 11, 1982.

Rule 8. Amendment of pleadings. A. WHEN ALLOWED. Amendment of pleadings shall be allowed at the discretion of the court.

B. ANSWER. A defendant shall file and serve an answer within ten days of the service of an amended complaint upon him; no other pleading to an amended pleading shall be allowed, except that the court may order a reply to the amended answer or counterclaim.

History: Ad. Sup. Ct. Ord. July 15, 1982, eff. Oct. 1, 1982.

Rule 9. Motions and other papers. A. An application to the court for an order shall be by motion, which, unless made during a hearing or trial, shall be in writing. A motion shall state with particularity the grounds therefor and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing on the motion.

B. Any party opposing a motion may request a hearing on the same.

C. The rules applicable to captions, signing, other matters of form, and the method and proof of service of pleadings apply to all motions and other papers provided for by these rules.

D. A "motion" is not a "pleading." However, extensions of time for pleadings are governed by rule 6B.

History: Ad. Sup. Ct. Ord. July 15, 1982, eff. Oct. 1, 1982.

IV. Parties

Rule 10. Naming of parties to action. A. Actions shall be prosecuted or defended in the name of the person who has or will benefit from or be responsible for the satisfaction of any judgment rendered in justice court. Such person shall be considered the real party in interest.

A personal representative, administrator, guardian, conservator, fiduciary, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may be named as a party to an action. In such case the pleadings shall contain information concerning the circumstances or statute which enables the person to appear in his name and not in the name of the person for whose benefit the action is prosecuted or defended.

B. AMENDMENT, DISMISSAL. No action shall be dismissed for the reason that the real party in interest is not named in the pleadings until 5 days have passed from the date upon which a party is served with an order of the justice court requiring such amendment.

A dismissal for failure to name the real party in interest shall be without prejudice.

History: Ad. Sup. Ct. Ord. July 15, 1982, eff. Oct. 1, 1982.

Rule 11. Substitution of parties. A. If an original party to an action dies, becomes incompetent, transfers his interest, or is succeeded in office, and the claim survives the absence of the original party, the justice court may order substitution of the proper party. Such substitution shall be governed by rule 10(A).

B. FAILURE TO MAKE SUBSTITUTION. If substitution is not made within a reasonable time after being ordered, the action may be dismissed. Dismissal shall be without prejudice.

History: Ad. Sup. Ct. Ord. July 15, 1982, eff. Oct. 1, 1982.

Rule 12. Joinder of claims and parties necessary for just adjudication. A. INVOLUNTARY JOINDER. A person subject to service of process shall be joined if in his absence:

(1) Complete relief cannot be accorded among those already parties;

(2) Such person will not be able to protect his interest in the subject of the action; or,

(3) There is the likelihood of double, multiple or otherwise inconsistent obligations by reason of his claimed interest.

B. PERMISSIVE JOINDER. All persons may join in an action if they assert any right to relief, whether jointly or as individuals, arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or of fact common to all will arise in the action.

C. MISJOINDER. Misjoinder of parties is not grounds for dismissal. The justice may add or drop parties by order either on motion of a party or on its own initiative at any state of the proceedings and on such terms as are just. Claims against a party or parties may be severed and proceed to separate trials as deemed necessary by the judge in order to render a full adjudication of all claims in an orderly manner.

D. CLASS ACTIONS. Class actions shall not be permitted in justice court proceedings.

History: Ad. Sup. Ct. Ord. July 15, 1982, eff. Oct. 1, 1982.

V. Discovery

Rule 13. Discovery. Depositions to be used in justice courts shall be taken as provided in Rules 26 and 28-30 of the Montana Rules of Civil Procedure.

History: Ad. Sup. Ct. Ord. July 15, 1982, eff. Oct. 1, 1982.

VI. Jury Trial

Rule 14. Right to jury trial. A. RIGHT RESERVED. The right of a trial by jury as declared by the Constitution of The State of Montana or as given by a statute of the state of Montana shall be preserved to the parties inviolate.

B. DEMAND. A party may demand a trial by jury of any issue of fact by filing in the court and serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than five days after the service of the last pleading directed to such issue. Such demand may be stated in a pleading of the party.

C. HOW WAIVED. A jury may be waived:

(1) By consent of the parties entered in the docket;

(2) By a failure of any party to demand a jury trial under this rule;

(3) By the failure of either party to appear at the time fixed for the trial of an issue of fact;

(4) By failure to comply with rule 14E hereof.

D. NOTICE OF JURY TRIAL. After all parties served with process have appeared or some have appeared and the remaining have been defaulted, the justice, upon request of any party, shall fix a day for trial of the cause, and notify the plaintiffs and defendants who have appeared of the date.

E. FAILURE TO APPEAR.

(1) If a defendant fails to appear at the time fixed for trial, the trial may proceed at the request of the adverse party or parties.

(2) If plaintiff fails to appear at the time fixed for trial, the justice shall dismiss the plaintiff's claim with prejudice and award costs to the defendant; trial may proceed on any other pending claims of any other parties.

F. COSTS.

(1) The party demanding a jury trial shall pay jurors' fees as set out in section 3-15-203, MCA, and such fee shall be taxed as costs against the losing party as determined by the court.

(2) Deposit, each additional trial day. At or before the end of each day of jury trial, the justice shall require the parties to deposit an amount sufficient to pay juror's fees for the next trial day. Failure to make the deposit for the next day's juror's fees shall constitute a waiver of the continuance of a jury trial and the trial shall continue before the court as a nonjury trial.

(3) Taxed as costs. The deposits for juror's fees required under (1) and (2) of this rule shall be taxed as costs against the losing party.

History: Ad. Sup. Ct. Ord. July 15, 1982, eff. Oct. 1, 1982.

Rule 15. Jury. A. NUMBER OF JURORS. A jury in a justice court consists of six persons, but the parties may agree to fewer than six.

B. SELECTION OF JURORS. At the time appointed for a jury trial in a justice court, the court shall summon at least twice the number of jurors agreed upon by the parties before trial. The court shall call the list, and the names of those attending and not excused shall be written upon separate slips of paper, folded so as to conceal the names, placed in a box, and drawn to form a list of trial jurors in order of names drawn.

C. IMPANELING. The jury in a civil action in justice court shall be impaneled as provided in sections 25-7-202 through 25-7-209, MCA. Where the words "clerk" or "district court" occur in such code sections, such words shall be deemed to refer to the justice court in application under this rule.

D. CHALLENGES.

(1) There can be only one challenge on a side to the array or panel, which may be made by one or more of the parties.

(2) To a juror or jurors. Each side is entitled to two peremptory challenges and to any number of challenges for cause on grounds set forth in section 25-7-223, MCA. A party may exercise a peremptory challenge during the impaneling of the jury, or shall exercise each challenge alternatively with the other party starting with the plaintiff after the panel is full. The justice shall determine the validity of any challenge for cause.

E. SICKNESS OF JUROR. If a juror becomes sick so as to be unable to perform his duty after impaneling of the jury but before verdict, the justice may order him discharged and either proceed with the other jurors, swear in an alternate juror, or continue the case or discharge the jury and impanel a new jury.

F. PREVENTION OF JURY FROM GIVING VERDICT. When a jury is discharged or prevented from giving a verdict by reason of accident or other cause during the course of the trial, the justice may try the action with another jury again immediately or at a future time.

History: Ad. Sup. Ct. Ord. July 15, 1982, eff. Oct. 1, 1982.

Rule 16. Order of trial. In a nonjury trial, or in a jury trial, after the jury has been impaneled, the trial shall proceed in the following order, unless the court, for good cause, otherwise directs:

A. The party on whom rests the burden of the issues may briefly state his case, and the evidence by which he expects to sustain it.

B. The adverse party may next briefly state his defense, and the evidence he expects to offer in support of it or he may reserve his opening statement for the beginning of his case.

C. The party on whom rests the burden of the issues must first produce his evidence; the adverse party will then produce his evidence.

D. The parties will then be confined to rebutting evidence, unless the court, for good reasons, in furtherance of justice, permits them to offer evidence in their original case.

E. The court shall charge the jury with its duties, instructing it in all matters of law which it thinks necessary for its information in rendering a verdict. Proposed instructions may be offered to the court by the parties.

F. The order for closing argument shall be (1) plaintiff, (2) defendant, and (3) rebuttal by plaintiff of defendant's argument. No further argument is allowed. If several defendants having several defenses appear by different counsel, the court must determine their relative order in the evidence and argument. In arguing the case to the jury, a party or counsel may argue and comment upon the law of the case as given in the instructions of the court, as well as upon the evidence in the case.

History: **Ad. Sup. Ct. Ord. July 15, 1982, eff. Oct. 1, 1982.**

VII. Judgment

Rule 17. Entry of judgment. A. GROUNDS. A justice shall enter judgment in the docket of the court in the following circumstances:

(1) Offer to compromise before trial. If the defendant, at any time before the trial, offers in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he does not accept such offer before the trial and fail to recover in the action a sum in excess of the offer, he cannot recover costs, but costs must be adjudged against him and, if he recover, be deducted from his recovery. The offer and failure to accept cannot be given in evidence or affect the recovery otherwise than as to costs.

(2) Judgment of dismissal without prejudice. Judgment that the action be dismissed without prejudice to a new action may be entered with costs against the plaintiff in the following cases:

(a) when the plaintiff voluntarily dismissed the action, at or before the close of his evidence, when there is no counterclaim;

(b) when the plaintiff fails to amend the complaint within the time allowed by the court;

(c) when it is objected at the trial and appears by the evidence that the action is brought in the wrong county.

(3) Upon verdict. After a trial by jury the justice shall enter judgment at once in conformity with the verdict.

(4) After trial by the justice. When the trial is by the justice, the justice must enter judgment within 5 days.

(5) By default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, the justice shall enter the default against such party. When a defendant has been defaulted for failure to appear and it is otherwise proper under these rules, if the plaintiff's claim against such defendant is for a sum certain or for a sum which can by computation be made certain, the justice upon request of the plaintiff, containing a statement of the amount due shall enter judgment for that amount and costs against the defaulted defendant. In all cases the party entitled to a judgment of default shall apply to the court therefor. No judgment by default shall be entered against a party who has appeared in the action unless he has been served with written notice of the application for judgment at least three days prior to the hearing of such application. If in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the state of Montana.

When default has been entered, and no judgment is rendered and entered within 90 days thereafter, the justice shall dismiss the case without prejudice.

B. COSTS. The justice shall tax and include in the judgment all costs allowed by law to the prevailing party.

C. MULTIPLE DEFENDANTS. The court shall enter judgment only against those over whom it has obtained jurisdiction.

D. ABSTRACT OF JUDGMENT.

(1) How entered. A party may file with the clerk of any district court of the state of Montana an abstract of judgment taken in any justice court. The clerk of court shall enter a judgment in the judgment docket of that district court.

(2) Abstract. On demand of a party in whose favor judgment is rendered, a justice shall give him an abstract of the judgment in substantially the following form:

State of Montana)
) ss.
County of ....)

....,
Plaintiff
vs.

....,
Defendant.

In Justice Court, before ...., Justice of the Peace, ... County. Judgment entered for plaintiff (or defendant) for $......, on the ...... day of .... I certify that the foregoing is a correct abstract of a judgment rendered in said action in my court, (or /as the case may be/ in the court of ...., Justice of the Peace, as it appears by his docket now in my possession as his successor in office).

DATED this ...... day of ...., 19.....

....
Justice of the Peace

(3) Certification. An abstract of judgment to be filed in the district court of any county of this state other than the county in which judgment is taken shall have been certified in the same manner as a summons issued by a justice to be served outside the county.

History: MAd. Sup. Ct. Ord. July 15, 1982, eff. Oct. 1, 1982; amd. Sup. Ct. Ord. Oct. 14, 1982.

Rule 18. Relief from judgment. A justice may, on such terms as may be just and on the payment of costs, relieve a party from any judgment taken against him by mistake, inadvertence, surprise, or excusable neglect, but the application for such relief must be made within 30 days after entry of the judgment, and upon an affidavit showing good cause for it. The party applying for such relief shall serve the application and give notice of hearing thereon to all other parties; the court shall set a hearing within 10 days after receipt of the application.

History: Ad. Sup. Ct. Ord. July 15, 1982, eff. Oct. 1, 1982.

VIII. Execution

Rule 19. Execution. A. HOW ENFORCED.

(1) By the justice court. A judgment may be enforced within the county in which the judgment was obtained by a writ of execution issued by the justice court.

(2) By the district court. When judgment has been entered in the district court based on an abstract of judgment from a justice court as provided in these rules, such judgment may be enforced in any county within the state of Montana by writ of execution issued by such district court.

B. TIME. The party in whose favor judgment is entered may request a writ of execution for its enforcement against the personal property of the judgment debtor. At any time within six years from the entry of judgment, the justice of the peace who entered the judgment or his successor in office shall issue the writ upon request.

C. FORM AND CONTENT OF EXECUTION. The execution must be directed to the sheriff or to a constable of the county and must be subscribed by the justice and bear the date of the day of its issuance. The execution shall contain the following information, and may be in the following form:

IN JUSTICE COURT, ...COUNTY, MONTANA

BEFORE ....JUSTICE OF THE PEACE

....	)	
....,	)	Case No. ......
Plaintiff	)	
vs.	)	EXECUTION
....	)	
....,	)	
Defendant.	)	

THE STATE OF MONTANA TO THE SHERIFF OR ANY CONSTABLE OF .... COUNTY:

WHEREAS, on the ...... day of ...., A.D., 19...., ... recovered a judgment in the said Justice Court against .... as follows:

Original or Balance Due on Judgment in the amount of	$ ....
Together with accrued interest at ...% per annum on the Judgment, and	$ ....
Costs & Disbursements Accrued	$ ....
Total sum due & owing at date of this execution	$ ....

Together with all costs of execution (and) (or) for personal property described as follows:

....

....

(Attach description if necessary)

NOW, You the said Sheriff or Constable, are hereby required to make said sum due on the said judgment or damages, with interest aforesaid and costs and accruing costs, to satisfy the said judgment out of the PERSONAL PROPERTY of the said debtor NOT EXEMPT FROM EXECUTION on the day whereon said judgment was docketed in the said county, or at any time hereafter, and make return of this writ within ...... days after your receipt hereof with what you have done, endorsed thereon.

Given under my hand this ...... day of ...., 19.....

....
Justice of the Peace

D. RENEWAL. If a writ of execution is returned unsatisfied or partially satisfied, a new writ may be issued for the unsatisfied portion of the judgment, together with costs and interest. No new or additional writ shall be issued until any outstanding issued writ, together with the sheriff's return thereon, is returned to the issuing justice court.

E. SUPPLEMENTAL PROCEEDINGS. Proceedings supplementary to execution set out in sections 25-13-502 and 25-14-101, MCA through 25-14-108, except 25-14-106, MCA, are applicable to justice of the peace courts, the word "constable" being substituted for the word "sheriff" and the word "justice" for the word "judge."

History: Ad. Sup. Ct. Ord. July 15, 1982, eff. Oct. 1, 1982.

IX. Appeal

Rule 20. Appeal to district court. Appeals from a justice court to a district court are governed by Ch. 33, Title 25, MCA, except that the undertaking on appeal, when the judgment is for the payment of money, may be in the form of an appeal bond or a deposit of money in a sum equal to the amount of the judgment, including costs.

History: Ad. Sup. Ct. Ord. July 15, 1982, eff. Oct. 1, 1982.

CHAPTERS 23 THROUGH 29

RESERVED

CHAPTER 30

PROCEDURE IN MUNICIPAL COURTS

Part 1 — General Provisions

25-30-101. Applicability of district court and justice's court rules.
25-30-102. Fees and fines.
25-30-103. Summons — time for answer.
25-30-104. Reply to counterclaim or new matter.
25-30-105. Jury trial.
25-30-106. Judgments.

25-30-107. Costs.
25-30-108. Appeals.

Chapter Cross-References

"Judicial officer" as including Municipal Judge, 1-1-202(2).

Officers who may administer oaths, 1-6-101.

Courts and judicial officers generally, Title 3, ch. 1.

Restrictions on Municipal Court Judges, 3-1-604.

Municipal Courts, Title 3, ch. 6.

Civil actions — form and commencement, Title 25, ch. 1, part 1.

Criminal procedure in Municipal Court, Title 25, ch. 30.

Concurrent jurisdiction with youth court, 41-5-203.

Part 1

General Provisions

25-30-101. Applicability of district court and justice's court rules. (1) The provisions of 3-10-222, 3-10-231 through 3-10-234, 3-10-305, 3-10-306, and 3-10-704 through 3-10-706; 25-31-102(2), 25-31-114 through 25-31-116, 25-31-304, 25-31-402(2), 25-31-405, parts 7 through 11 of chapter 31 of this title (except 25-31-915, 25-31-1002, 25-31-1004, and 25-31-1005), and chapter 33 of this title; and chapter 9, part 10 of chapter 16, chapter 17, and part 15 of chapter 18 of Title 27 are applicable to municipal courts except when they are inconsistent with the provisions of this chapter and chapter 6 of Title 3, the words "municipal court" being substituted for justice's court and "judge" for justice of the peace.

(2) Except as otherwise provided by this chapter, chapter 6 of Title 3, and the supreme court's rules on disqualification of judges, the proceedings and practice in municipal court shall be the same as in district court.

History: (1)En. Sec. 11, Ch. 177, L. 1935; re-en. Sec. 5094.11, R.C.M. 1935; amd. Sec. 9, Ch. 344, L. 1977; amd. Sec. 8, Ch. 429, L. 1977; Sec. 11-1711, R.C.M. 1947; (2)En. Sec. 20, Ch. 177, L. 1935; re-en. Sec. 5094.19, R.C.M. 1935; Sec. 11-1719, R.C.M. 1947; R.C.M. 1947, 11-1711(1), 11-1719(part); amd. Sec. 2, Ch. 409, L. 1979; amd. Sec. 111, Ch. 575, L. 1981.

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-30-102. Fees and fines. The fees and fines in municipal court shall be the same as the fees and fines provided by law or ordinance, and all fees and fines collected by the court shall be paid into the city treasury.

History: En. Sec. 18, Ch. 177, L. 1935; re-en. Sec. 5094.18, R.C.M. 1935; amd. Sec. 10, Ch. 429, L. 1977; R.C.M. 1947, 11-1718.

25-30-103. Summons — time for answer. The summons in municipal court shall be signed by the clerk and shall conform to the provisions of M.R.Civ.P., Rules 4 and 12(a), except that the time for answering is 10 days.

History: En. Sec. 10, Ch. 177, L. 1935; re-en. Sec. 5094.10, R.C.M. 1935; amd. Sec. 8, Ch. 344, L. 1977; amd. Sec. 7, Ch. 429, L. 1977; R.C.M. 1947, 11-1710.

25-30-104. Reply to counterclaim or new matter. Whenever the answer contains a counterclaim or any new matter, the plaintiff shall within 5 days after the service and filing of the answer reply to the counterclaim or new matter in the manner and form provided for in M.R.Civ.P., Rules 7(a), 8(e)(2), and 10(b).

History: En. Sec. 11, Ch. 177, L. 1935; re-en. Sec. 5094.11, R.C.M. 1935; amd. Sec. 9, Ch. 344, L. 1977; amd. Sec. 8, Ch. 429, L. 1977; R.C.M. 1947, 11-1711(2).

25-30-105. Jury trial. In civil causes arising under the state law, either party shall be entitled to a jury trial, as provided in justices' courts, except that the police officer shall perform the duties thereto prescribed to the sheriff or constable.

History: En. Sec. 15, Ch. 177, L. 1935; re-en. Sec. 5094.15, R.C.M. 1935; R.C.M. 1947, 11-1715(part).

Cross-References

Right to trial by jury, Art. II, sec. 26, Mont. Const.

Officers of the court, 3-6-303.

Trial in Justice's Court, Title 25, ch. 31, part 8.

25-30-106. Judgments. In civil causes, judgments in municipal court shall be made and entered as in district court and shall be of like tenor and effect.

History: En. Sec. 12, Ch. 177, L. 1935; re-en. Sec. 5094.12, R.C.M. 1935; R.C.M. 1947, 11-1712.

Cross-References

Judgment, Title 25, ch. 9.

Execution of judgment, Title 25, ch. 13.

Judgment — costs, Rule 54, M.R.Civ.P. (see Title 25, ch. 20).

25-30-107. Costs. The same costs shall be allowed as are allowed in justices' courts and shall be taxed and retaxed as in district court, 24 hours being allowed for filing memorandum of costs.

History: En. Sec. 14, Ch. 177, L. 1935; re-en. Sec. 5094.14, R.C.M. 1935; R.C.M. 1947, 11-1714.

Cross-References

Costs, Title 25, ch. 10; Rule 54(d), M.R.Civ.P. (see Title 25, ch. 20).

Entry of judgment not to be delayed for costs, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-30-108. Appeals. (1) A party may appeal to district court from a judgment of municipal court.

(2) Appeal from a municipal court may be limited by requiring by ordinance that a minimum amount in controversy, not to exceed $200, be met before the district court has jurisdiction to hear the appeal, except upon petition by an aggrieved party, the district court may, in the interests of justice, accept appeal jurisdiction notwithstanding the amount in controversy.

History: En. Sec. 17, Ch. 177, L. 1935; re-en. Sec. 5094.17, R.C.M. 1935; amd. Sec. 9, Ch. 429, L. 1977; R.C.M. 1947, 11-1717(part).

Cross-References

Kinds of District Court jurisdiction, 3-5-301.

Appellate jurisdiction of District Court, 3-5-303.

Municipal Court to establish rules for appeals, 3-6-104.

CHAPTER 31

PROCEDURE IN JUSTICES' COURTS

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25-31-1111. Collection of judgment against county or county officer.

Chapter Cross-References

Justices of the Peace, Art. VII, sec. 5, 7, Mont. Const.

Courts and judicial officers generally, Title 3, ch. 1.

Appellate jurisdiction of District Court, 3-5-303.

Justices' Courts, Title 3, ch. 10.

Civil actions — form and commencement, Title 25, ch. 1, part 1.

Appeal to District Court from Justices' and City Courts, Title 25, ch. 33.

Small claims procedure — Justices' Court, Title 25, ch. 35.

Arrest in civil actions in Justice's Court, Title 27, ch. 16, part 10.

Attachment in Justice's Court, Title 27, ch. 18, part 15.

Criminal Procedure in Justices' Courts, Title 46, ch. 17, parts 1 through 3.

Part 1

General Provisions

25-31-101. Issues which cannot be presented in justice's court. (1) The parties to an action in a justice's court cannot give evidence upon any question which involves the title or possession of real property or the legality of any tax, impost, assessment, toll, or municipal fine, nor can any issue presenting such question be tried by such court; provided that, in cases of forcible entry and unlawful detainer of which justices' courts have jurisdiction, any evidence otherwise competent may be given, and any question properly involved therein may be determined.

(2) A justice's court may not hear evidence on or try any issue involving the state's liability to make a payment of money, regardless of the basis of the claim against the state.

History: En. Sec. 593, Bannack Stat.; re-en. Sec. 699, p. 176, Cod. Stat. 1871; re-en. Sec. 759, 1st Div. Rev. Stat. 1879; re-en. Sec. 779, 1st Div. Comp. Stat. 1887; en. Sec. 1486, C. Civ. Proc. 1895; re-en. Sec. 6992, Rev. C. 1907; re-en. Sec. 9625, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 838; re-en. Sec. 9625, R.C.M. 1935; R.C.M. 1947, 93-6607(part); amd. Sec. 4, Ch. 409, L. 1979.

Cross-References

Jurisdiction of Justices' Courts, Title 3, ch. 10, part 3.

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-102. Transfer to district court — dismissal. (1) If it appears from the answer of the defendant, verified by his oath, that the determination of the action will necessarily involve the question of title or possession to real property or the legality of any tax, impost, assessment, toll, or municipal fine, the justice must suspend all further proceedings in the action and certify the pleadings and, if any of the pleadings are oral, a transcript of the same from his docket to the clerk of the district court of the county. From the time of the certification of such pleadings or transcript to the clerk, the district court shall have over the action the same jurisdiction as if it had been commenced therein. When the action is certified to the district court, upon the answer of the defendant, he must file an undertaking, to be approved by the justice, to the effect that he will pay all costs that may be awarded against him on the trial in the district court.

(2) If it appears at any point in the proceedings in a justice's court that the determination of the action will involve the question of the state's liability to make a payment of money, the justice shall sever that issue and dismiss the action as to it. If the issue is not severable, the justice shall dismiss the entire action.

History: En. Sec. 593, Bannack Stat.; re-en. Sec. 699, p. 176, Cod. Stat. 1871; re-en. Sec. 759, 1st Div. Rev. Stat. 1879; re-en. Sec. 779, 1st Div. Comp. Stat. 1887; en. Sec. 1486, C. Civ. Proc.

1895; re-en. Sec. 6992, Rev. C. 1907; re-en. Sec. 9625, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 838; re-en. Sec. 9625, R.C.M. 1935; R.C.M. 1947, 93-6607(part); amd. Sec. 5, Ch. 409, L. 1979; amd. Sec. 112, Ch. 575, L. 1981.

Cross-References

Civil jurisdiction of Justices' Courts, 3-10-301.

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-103 through 25-31-110 reserved.

25-31-111. What provisions of code applicable to justices' courts. Because justices' courts are courts of peculiar and limited jurisdiction, only those provisions of this code which are, in their nature, applicable to the organization, powers, and course of proceedings in justices' courts or which have been made applicable by special provisions in this chapter and Titles 3 and 27 are applicable to justices' courts and the proceedings therein.

History: En. Sec. 1686, C. Civ. Proc. 1895; re-en. Sec. 7084, Rev. C. 1907; re-en. Sec. 9717, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 925; re-en. Sec. 9717, R.C.M. 1935; amd. Sec. 52, Ch. 344, L. 1977; R.C.M. 1947, 93-7707; amd. Sec. 113, Ch. 575, L. 1981.

Cross-References

What provisions of code applicable to Justices' Courts, 3-10-111.

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

Claim and delivery in Justice's Court, 27-17-102.

25-31-112. Fees. The following is the schedule of fees which, except as provided in 25-35-605, shall be paid in every civil action in a justice's court:

(1) $10 when complaint is filed, to be paid by the plaintiff;

(2) $10 when the defendant appears, to be paid by the defendant;

(3) $10 to be paid by the prevailing party when judgment is rendered. In cases where judgment is entered by default, no charge except the $10 for the filing of the complaint shall be made for any services, including issuing and return of execution.

(4) $10 for all services in an action where judgment is rendered by confession;

(5) $10 for filing notice of appeal and transcript on appeal, justifying and approving undertaking on appeal, and transmitting papers to the district court with certificate.

History: En. Sec. 4642, Pol. C. 1895; and as Sec. 1, Ch. 52, L. 1903; re-en. Secs. 3175-3176, Rev. C. 1907; superseded by Sec. 1, Ch. 55, L. 1921; re-en. Sec. 4924, R.C.M. 1921; re-en. Sec. 4924, R.C.M. 1935; amd. Sec. 1, Ch. 184, L. 1963; amd. Sec. 3, Ch. 420, L. 1975; amd. Sec. 1, Ch. 154, L. 1977; R.C.M. 1947, 25-301; amd. Sec. 28, Ch. 586, L. 1981; amd. Sec. 2, Ch. 492, L. 1983; amd. Sec. 2, Ch. 569, L. 1985.

Cross-References

Fines, penalties, forfeitures, fees, and costs in Justices' Courts, Title 3, ch. 10, part 6.

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-113. When fees payable. All fees must be paid in advance, and no costs shall be included in any judgment until they have been paid. However, nothing herein contained shall restrict or prevent the bringing of suits in forma pauperis as provided by law.

History: En. Sec. 4642, Pol. C. 1895; and as Sec. 1, Ch. 52, L. 1903; re-en. Secs. 3175-3176, Rev. C. 1907; superseded by Sec. 2, Ch. 55, L. 1921; re-en. Sec. 4925, R.C.M. 1921; re-en. Sec. 4925, R.C.M. 1935; R.C.M. 1947, 25-302.

Cross-References
Fines, penalties, forfeitures, fees, and costs in Justices' Courts, Title 3, ch. 10, part 6.
Poor persons not required to prepay fees, 25-10-404.
Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.
Small claims procedure — fees, 25-35-608.

25-31-114. Depositions. Depositions to be used in justices' courts shall be taken as provided in Rules 26 and 28 to 32, inclusive, of the Montana Rules of Civil Procedure.

History: En. Sec. 1691, C. Civ. Proc. 1895; re-en. Sec. 7089, Rev. C. 1907; re-en. Sec. 9722, R.C.M. 1921; re-en. Sec. 9722, R.C.M. 1935; amd. Sec. 1, Ch. 167, L. 1967; R.C.M. 1947, 93-7712.

Cross-References
Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-115. Deposit of money in lieu of undertaking. In civil cases arising in justices' courts wherein an undertaking is required by this chapter, the plaintiff or defendant may deposit with said justice a sum of money equal to the amount required by said undertaking, which said sum of money shall be taken as security in place of said undertaking.

History: En. Sec. 1687, C. Civ. Proc. 1895; re-en. Sec. 7085, Rev. C. 1907; re-en. Sec. 9718, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 926; re-en. Sec. 9718, R.C.M. 1935; R.C.M. 1947, 93-7708; amd. Sec. 114, Ch. 575, L. 1981.

Cross-References
Undertakings for security, Title 25, ch. 1, part 4.

25-31-116. Offer to compromise before trial. If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he do not accept such offer before the trial and fail to recover in the action a sum in excess of the offer, he cannot recover costs, but costs must be adjudged against him and, if he recover, be deducted from his recovery. The offer and failure to accept cannot be given in evidence or affect the recovery otherwise than as to costs.

History: En. Sec. 611, p. 164, Bannack Stat.; re-en. Sec. 717, p. 180, Cod. Stat. 1871; re-en. Sec. 777, 1st Div. Rev. Stat. 1879; re-en. Sec. 797, 1st Div. Comp. Stat. 1887; amd. Sec. 1628, C. Civ. Proc. 1895; re-en. Sec. 7054, Rev. C. 1907; re-en. Sec. 9687, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 895; re-en. Sec. 9687, R.C.M. 1935; R.C.M. 1947, 93-7309.

Cross-References
Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.
Costs, Title 25, ch. 31, part 10.
Confession of judgment, Title 27, ch. 9.

Part 2

Venue

25-31-201. Venue generally. Actions in justices' courts may be commenced and, subject to the right to change the place of trial, as provided in part 3 of this chapter, may be tried:

(1) when the defendant is a nonresident of the county, in any county where he may be found and served with summons personally;

(2) when the defendant is a nonresident of the state, in any county of the state;

(3) when the parties voluntarily appear and plead without summons, in any county of the state;

(4) in all other cases, in any county in which the defendant or any one of the defendants, if there be more than one, resides or may be found and served with summons personally.

History: En. Sec. 1480, C. Civ. Proc. 1895; amd. Sec. 1, p. 148, L. 1899; re-en. Sec. 6986, Rev. C. 1907; re-en. Sec. 9619, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 832; re-en. Sec. 9619, R.C.M. 1935; amd. Sec. 15, Ch. 491, L. 1973; R.C.M. 1947, 93-6601(part).

Cross-References

Rules for determining residency, 1-1-215.

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-202. Actions based on a contract or other obligation. When the defendant or all of the defendants, if there be more than one, reside in another county than that in which the right of action accrues and the action be for damages for violation of an express or implied contract or for money due on an express or implied contract, debt, note, or account, the action may be commenced and, subject to the right to change the place of trial, as provided in part 3 of this chapter, may be tried in the county in which such contract or obligation is to be or was to have been performed or such money is to be or was to have been paid or in which the defendant or any one of the defendants resides; and the county in which the obligation is incurred shall be deemed to be the county in which it is to be performed or paid unless there is a special contract to the contrary.

History: En. Sec. 1480, C. Civ. Proc. 1895; amd. Sec. 1, p. 148, L. 1899; re-en. Sec. 6986, Rev. C. 1907; re-en. Sec. 9619, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 832; re-en. Sec. 9619, R.C.M. 1935; amd. Sec. 15, Ch. 491, L. 1973; R.C.M. 1947, 93-6601(part).

Cross-References

Proper venue in District Court actions, Title 25, ch. 2, part 1.

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

Limitation of damages for breach of obligation, 27-1-303.

Damages for breach of contract, 27-1-311.

25-31-203. Actions for damages for injury to person, property, or reputation. When the defendant or all of the defendants, if there be more than one, reside in another county than that in which the right of action accrues and the action be for damages for injury to person, property, or reputation, the action may be commenced and, subject to the right to change the place of trial, as provided in part 3 of this chapter, may be tried in the county where the injury was committed or in which the defendant or any one of the defendants resides.

History: En. Sec. 1480, C. Civ. Proc. 1895; amd. Sec. 1, p. 148, L. 1899; re-en. Sec. 6986, Rev. C. 1907; re-en. Sec. 9619, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 832; re-en. Sec. 9619, R.C.M. 1935; amd. Sec. 15, Ch. 491, L. 1973; R.C.M. 1947, 93-6601(part).

Cross-References

Rules for determining residency, 1-1-215.

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

Damages, Title 27, ch. 1, part 2.

Libel and slander, Title 27, ch. 1, part 8.

25-31-204. Actions for the taking of or to recover personal property. In justice's court when the defendant or all the defendants, if there be more than one, reside in another county than that in which the right of action accrues and the action be for the recovery of personal property or the value thereof or damages for taking or detaining the same, the action may be commenced and, subject to the right to change the place of trial, as provided in part 3 of this chapter, may be tried in the county in which the property or any part thereof may be found, in which the property or any part thereof was taken, or in which the defendant or any one of the defendants resides.

History: En. Sec. 1480, C. Civ. Proc. 1895; amd. Sec. 1, p. 148, L. 1899; re-en. Sec. 6986, Rev. C. 1907; re-en. Sec. 9619, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 832; re-en. Sec. 9619, R.C.M. 1935; amd. Sec. 15, Ch. 491, L. 1973; R.C.M. 1947, 93-6601(part).

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

Claim and delivery of personal property, Title 27, ch. 17.

25-31-205. Actions for forcible entry or unlawful detainer. All actions for the recovery of the possession of real property must be commenced in the county in which the real property, or any part thereof, affected by such action or actions is situated.

History: En. Sec. 43, C. Civ. Proc. 1895; re-en. Sec. 6277, Rev. C. 1907; re-en. Sec. 8831, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 78; R.C.M. 1947, 93-320(part).

Cross-References

Forcible entry and unlawful detainer, Title 70, ch. 27.

Part 3

Change of Venue

Part Cross-References

Circumstances in which an acting Justice called in — by whom, 3-10-231.

Criminal procedure — change of place of trial, 46-17-103.

25-31-301. When change of venue permitted. The court may, at any time before trial, on motion, change the place of trial in the following cases:

(1) when it appears to the satisfaction of the justice before whom the action is pending, by affidavit of either party, that such justice is a material witness for either party;

(2) when a jury has been demanded and either party makes and files an affidavit that he cannot have a fair and impartial trial on account of the bias or prejudice of the citizens of the county, town, or city against him;

(3) when, from any cause, the justice is disqualified from acting, except when supreme court rule prohibits the justice from acting to change the place of trial;

(4) when the justice is sick or unable to act.

History: En. Sec. 594, p. 160, Bannack Stat.; re-en. Sec. 700, p. 176, Cod. Stat. 1871; re-en. Sec. 760, 1st Div. Rev. Stat. 1879; re-en. Sec. 780, 1st Div. Comp. Stat. 1887; en. Sec. 1481, C. Civ. Proc. 1895; re-en. Sec. 6987, Rev. C. 1907; re-en. Sec. 9620, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 833; re-en. Sec. 9620, R.C.M. 1935; amd. Sec. 16, Ch. 491, L. 1973; former (2) superseded by Sup. Ct. Ord., 34 St. Rep. 26, Dec. 29, 1976; R.C.M. 1947, 93-6602; amd. Sec. 115, Ch. 575, L. 1981.

25-31-302. Contents of affidavits. The affidavit mentioned in subsections (1) and (2) of 25-31-301 must state the facts.

History: En. Sec. 1482, C. Civ. Proc. 1895; re-en. Sec. 6988, Rev. C. 1907; amd. Sec. 1, Ch. 37, L. 1921; re-en. Sec. 9621, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 834; re-en. Sec. 9621, R.C.M. 1935; R.C.M. 1947, 93-6603(part).

25-31-303. Limit on number of changes. The place of trial cannot be changed on motion of the same party more than once upon any or all the grounds specified in subsections (1) and (2) of 25-31-301.

History: En. Sec. 1482, C. Civ. Proc. 1895; re-en. Sec. 6988, Rev. C. 1907; amd. Sec. 1, Ch. 37, L. 1921; re-en. Sec. 9621, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 834; re-en. Sec. 9621, R.C.M. 1935; R.C.M. 1947, 93-6603(part).

25-31-304. When improper venue basis for appeal. If the objection that the action is brought in the wrong county is taken and overruled, it is the cause of a reversal on appeal and does not otherwise invalidate the judgment; if not taken at the trial, it is waived.

History: En. Sec. 605, p. 163, Bannack Stat.; re-en. Sec. 711, p. 179, Cod. Stat. 1871; re-en. Sec. 771, 1st Div. Rev. Stat. 1879; re-en. Sec. 791, 1st Div. Comp. Stat. 1887; amd. Sec. 1621, C. Civ. Proc. 1895; re-en. Sec. 7047, Rev. C. 1907; re-en. Sec. 9680, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 890; re-en. Sec. 9680, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1937; amd. Sec. 19, Ch. 491, L. 1973; R.C.M. 1947, 93-7302(part).

Cross-References

Judgment of dismissal without prejudice when based on improper venue, 25-31-903.

25-31-305. Where action to be transferred. When the court orders the place of trial to be changed, the action must be transferred for trial to a court the parties may agree upon and, if they do not so agree, to another justice's court in the same county.

History: En. Sec. 1483, C. Civ. Proc. 1895; re-en. Sec. 6989, Rev. C. 1907; re-en. Sec. 9622, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 835; re-en. Sec. 9622, R.C.M. 1935; R.C.M. 1947, 93-6604.

25-31-306. Papers to be transmitted. After an order has been made transferring the action or proceeding to another court for trial, the justice ordering the transfer must immediately transmit to the justice of the court to which it is transferred, on payment by the party applying of all the costs that have accrued, the pleading and all the papers in the action, together with a certified transcript from his docket of the proceedings therein.

History: Ap. p. Sec. 1484, C. Civ. Proc. 1895; re-en. Sec. 6990, Rev. C. 1907; re-en. Sec. 9623, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 836; re-en. Sec. 9623, R.C.M. 1935; Sec. 93-6605, R.C.M. 1947; Ap. p. Sec. 64, p. 53, L. 1877; re-en. Sec. 64, 1st Div. Rev. Stat. 1879; re-en. Sec. 64, 1st Div. Comp. Stat. 1887; re-en. Sec. 617, C. Civ. Proc. 1895; re-en. Sec. 6508, Rev. C. 1907; re-en. Sec. 9100, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 399; re-en. Sec. 9100, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1971; Sec. 93-2908, R.C.M. 1947; R.C.M. 1947, 93-2908(part), 93-6605(part).

Cross-References

Contents of docket, 3-10-501.

Costs of transferring papers — change of venue, 25-31-1005.

25-31-307. Jurisdiction of transferee court. From the time the order changing the place of trial is made, the court to which the action or proceeding is thereby transferred has and exercises the same jurisdiction over it as though it had been originally commenced in such court.

History: Ap. p. Sec. 1485, C. Civ. Proc. 1895; re-en. Sec. 6991, Rev. C. 1907; re-en. Sec. 9624, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 837; re-en. Sec. 9624, R.C.M. 1935; Sec. 93-6606, R.C.M.

1947; Ap. p. Sec. 64, p. 53, L. 1877; re-en. Sec. 64, 1st Div. Rev. Stat. 1879; re-en. Sec. 64, 1st Div. Comp. Stat. 1887; re-en. Sec. 617, C. Civ. Proc. 1895; re-en. Sec. 6508, Rev. C. 1907; re-en. Sec. 9100, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 399; re-en. Sec. 9100, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1971; Sec. 93-2908, R.C.M. 1947; R.C.M. 1947, 93-2908(part), 93-6606.

Cross-References

Jurisdiction of Justice's Court, Title 3, ch. 10, part 3.

25-31-308. Notice of the time and place of trial — pleading. Upon the receipt by him of such papers, the justice of the court to which the case is transferred must issue a notice stating when and where the trial will take place, which notice must be served upon the parties at least a day before the time fixed for trial. If no answer has been made by the defendant, he must be allowed to plead.

History: En. Sec. 1484, C. Civ. Proc. 1895; re-en. Sec. 6990, Rev. C. 1907; re-en. Sec. 9623, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 836; re-en. Sec. 9623, R.C.M. 1935; R.C.M. 1947, 93-6605(2); amd. Sec. 116, Ch. 575, L. 1981.

Part 4

Commencement of Action — Summons

25-31-401. How action commenced — complaint. An action in a justice's court is commenced by filing a copy of the account, note, bill, bond, or instrument upon which the action is brought, with a statement of the amount due thereon or a concise statement in writing of the cause of action, either of which is deemed a complaint.

History: En. Sec. 554, p. 151, Bannack Stat.; re-en. Sec. 660, p. 168, Cod. Stat. 1871; re-en. Sec. 720, 1st Div. Rev. Stat. 1879; re-en. Sec. 740, 1st Div. Comp. Stat. 1887; en. Sec. 1500, C. Civ. Proc. 1895; re-en. Sec. 6993, Rev. C. 1907; re-en. Sec. 9626, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 839; re-en. Sec. 9626, R.C.M. 1935; R.C.M. 1947, 93-6701.

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

Complaint, 25-31-504.

25-31-402. Time for issuing summons — security for costs. (1) The court must endorse on the complaint the date upon which it was filed, and at any time within 1 year thereafter the plaintiff may have summons issued.

(2) Justices may, in all cases, require a deposit of money or an undertaking as security for costs of court before issuing a summons.

History: (1)En. Sec. 1501, C. Civ. Proc. 1895; re-en. Sec. 6994, Rev. C. 1907; re-en. Sec. 9627, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 840; re-en. Sec. 9627, R.C.M. 1935; Sec. 93-6702, R.C.M. 1947; (2)En. Sec. 645, p. 171, Bannack Stat.; re-en. Sec. 750, p. 187, Cod. Stat. 1871; re-en. Sec. 810, 1st Div. Rev. Stat. 1879; re-en. Sec. 830, 1st Div. Comp. Stat. 1887; re-en. Sec. 1684, C. Civ. Proc. 1895; re-en. Sec. 7082, Rev. C. 1907; re-en. Sec. 9715, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 923; re-en. Sec. 9715, R.C.M. 1935; Sec. 93-7705, R.C.M. 1947; R.C.M. 1947, 93-6702, 93-7705.

Cross-References

Time of service to be recorded on docket, 3-10-501.

Undertakings for security, Title 25, ch. 1, part 4.

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

Deposit of money in lieu of undertaking, 25-31-115.

25-31-403. Waiver of summons by defendant. At any time after the complaint is filed, the defendant may, in writing or by appearing and pleading, waive the issuing of summons.

History: En. Sec. 1502, C. Civ. Proc. 1895; re-en. Sec. 6995, Rev. C. 1907; re-en. Sec. 9628, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 841; re-en. Sec. 9628, R.C.M. 1935; R.C.M. 1947, 93-6703.

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-404. Form and content of summons. The summons must be directed to the defendant and signed by the justice and must contain:

(1) the title of the court, the name of the county and city in which the action is commenced, and the names of the parties thereto;

(2) a sufficient statement of the cause of action, in general terms, to apprise the defendant of the nature of the claim against him, but a copy of the complaint in the action, when served with the copy of the summons upon defendant in lieu of said statement, is sufficient;

(3) a direction that the defendant appear and answer before the justice at his office, as specified in 25-31-406, and that if he fail to appear and answer, judgment will be taken against him according to the complaint.

History: En. Sec. 556, p. 152, Bannack Stat.; re-en. Sec. 662, p. 169, Cod. Stat. 1871; re-en. Sec. 722, 1st Div. Rev. Stat. 1879; re-en. Sec. 742, 1st Div. Comp. Stat. 1887; En. Sec. 1505, C. Civ. Proc. 1895; re-en. Sec. 6998, Rev. C. 1907; re-en. Sec. 9631, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 844; re-en. Sec. 9631, R.C.M. 1935; amd. Sec. 1, Ch. 91, L. 1939; amd. Sec. 17, Ch. 491, L. 1973; R.C.M. 1947, 93-6706.

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

Contents of summons for civil arrest, 27-16-1001.

25-31-405. Designating unknown person as defendant. Where the plaintiff is ignorant of the name or part of the name of a defendant, that defendant may be designated in the summons and in any other process or proceeding in the action by a fictitious name or by so much of his name as is known, adding a description identifying the person intended. The person so designated must thereupon be regarded as a defendant in the action and as sufficiently described therein for all purposes. When his name or the remainder of his name is known or becomes known, the justice before whom the action is pending must amend the proceedings already taken by the insertion of the true or full name in place of the fictitious name or part of a name, and all subsequent proceedings must be taken under the name so inserted.

History: En. Sec. 1692, C. Civ. Proc. 1895; re-en. Sec. 7090, Rev. C. 1907; re-en. Sec. 9723, R.C.M. 1921; re-en. Sec. 9723, R.C.M. 1935; R.C.M. 1947, 93-7713.

25-31-406. Time for answer or appearance. The time specified in the summons for the appearance of the defendant must be as follows:

(1) if an order of arrest be endorsed upon the summons, forthwith;

(2) in all other cases, the summons shall provide that the defendant shall answer and, if such answer be in writing, file the same and serve a copy thereof upon the plaintiff or his attorney within 6 days after service of this summons, exclusive of the day of service, and in case of his failure to appear

or answer, judgment will be taken against him by default for the relief demanded in the complaint.

History: En. Sec. 557, p. 152, Bannack Stat.; re-en. Sec. 663, p. 169, Cod. Stat. 1871; re-en. Sec. 723, 1st Div. Rev. Stat. 1879; re-en. Sec. 743, 1st Div. Comp. Stat. 1887; amd. Sec. 1506, C. Civ. Proc. 1895; re-en. Sec. 6999, Rev. C. 1907; re-en. Sec. 9632, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 845; re-en. Sec. 9632, R.C.M. 1935; amd. Sec. 3, Ch. 34, L. 1937; amd. Sec. 1, Ch. 196, L. 1939; R.C.M. 1947, 93-6707.

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

Procedure upon default, 25-31-901.

Arrest in civil actions in Justice's Court, Title 27, ch. 16, part 10.

25-31-407. Where summons may be served. (1) The summons cannot be served out of the county of the justice before whom the action is brought, except:

(a) when the action is brought upon a joint contract or obligation of two or more persons who reside in different counties and the summons has been served upon the defendant resident of the county, in which case the summons may be served upon the other defendant out of the county;

(b) when an action is brought against a party who has contracted to perform an obligation at a particular place and resides in a different county, in which case summons may be served in the county where he resides; and

(c) where an action is brought for an injury to person or property and the defendant resides in a different county, in which case summons may be served in the county where defendant resides.

(2) When a summons issued by a justice of the peace is to be served out of the county in which it was issued, the summons shall have attached to it a certificate, under seal by the county clerk of the county in which it was issued, to the effect that the person issuing the same was an acting justice of the peace at the date of the summons.

History: (1)En. Sec. 1509, C. Civ. Proc. 1895; re-en. Sec. 7002, Rev. C. 1907; re-en. Sec. 9635, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 848; re-en. Sec. 9635, R.C.M. 1935; Sec. 93-6710, R.C.M. 1947; (2)En. Sec. 1510, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 61, L. 1903; re-en. Sec. 7003, Rev. C. 1907; re-en. Sec. 9636, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 849; re-en. Sec. 9636, R.C.M. 1935; amd. Sec. 1, Ch. 110, L. 1967; amd. Sec. 57, Ch. 535, L. 1975; Sec. 93-6711, R.C.M. 1947; R.C.M. 1947, 93-6710, 93-6711(part).

Cross-References

Rules for determining residency, 1-1-215.

Territorial extent of civil jurisdiction, 3-10-304.

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-408. Who may serve summons — method of service, return. (1) The summons may be served by a sheriff or constable of any of the counties of this state or by any person resident in the state, 18 years of age or older, not a party to the suit.

(2) The summons must be served and returned as provided in M.R.Civ.P., Rule 4D (2), (4), (8), and (9), or by publication as provided in M.R.Civ.P., Rule 4D (5) and (8), so far as they relate to publication of summons, are made applicable to justices' courts, the word "justice" being substituted for the word "clerk" whenever the latter word occurs.

(3) Sections 25-3-201(2), 25-3-202 through 25-3-206, 25-3-301(2), 25-3-302, and 25-10-206 and part 6 of chapter 3 apply to service and return of process in justice's court.

History: (1), (2)En. Sec. 1510, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 61, L. 1903; re-en. Sec. 7003, Rev. C. 1907; re-en. Sec. 9636, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 849; re-en. Sec. 9636,

R.C.M. 1935; amd. Sec. 1, Ch. 110, L. 1967; amd. Sec. 57, Ch. 535, L. 1975; Sec. 93-6711, R.C.M. 1947; (3)En. by Code Commissioner, 1979; R.C.M. 1947, 93-6711(part); amd. Sec. 117, Ch. 575, L. 1981.

Cross-References

Constables to serve process, 3-10-701.

Deputy constables, 3-10-704.

Execution of process by retiring constable, 3-10-706.

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-409. Alias summons. If the summons is returned without being served upon any or all of the defendants, the justice, upon the demand of the plaintiff, may issue an alias summons in the same form as the original. The justice may, within a year from the date of filing the complaint, issue as many alias summonses as may be demanded by the plaintiff.

History: Ap. p. Sec. 1507, C. Civ. Proc. 1895; re-en. Sec. 7000, Rev. C. 1907; re-en. Sec. 9633, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 846; re-en. Sec. 9633, R.C.M. 1935; amd. Sec. 4, Ch. 34, L. 1937; Sec. 93-6708, R.C.M. 1947; Ap. p. Sec. 1508, C. Civ. Proc. 1895; re-en. Sec. 7001, Rev. C. 1907; re-en. Sec. 9634, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 847; re-en. Sec. 9634, R.C.M. 1935; Sec. 93-6709, R.C.M. 1947; R.C.M. 1947, 93-6708, 93-6709.

Part 5

Pleadings

Part Cross-References

Pleadings to be recorded on docket, 3-10-501.

25-31-501. Form of pleadings. Pleadings in justices' courts:

(1) are not required to be in any particular form but must be such as to enable a person of common understanding to know what is intended;

(2) may, except the complaint, be oral or in writing;

(3) need not be verified unless otherwise provided in this chapter or Title 27;

(4) if in writing, must be filed with the justice;

(5) if oral, an entry of their substance must be made in the docket;

(6) in cases of forcible entry and unlawful detainer, must be verified.

History: En. Sec. 1520, C. Civ. Proc. 1895; re-en. Sec. 7005, Rev. C. 1907; re-en. Sec. 9638, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 851; re-en. Sec. 9638, R.C.M. 1935; R.C.M. 1947, 93-6801; amd. Sec. 118, Ch. 575, L. 1981.

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

Form and content of Writ of Attachment, 27-18-1504.

Verification of complaint and answer in action for unlawful detainer, 70-27-116.

25-31-502. Permissible pleadings. In justice's court, there shall be a complaint and answer, a reply to a counterclaim denominated as such, an answer to a cross-claim, a third-party complaint if a person who is not an original party is brought into the action, and a third-party answer if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

History: En. Sec. 1, Ch. 168, L. 1967; R.C.M. 1947, 93-6802.1.

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-503. Demurrers abolished. Demurrers and exceptions for insufficiency of a pleading shall not be used.

History: **En. Sec. 2, Ch. 168, L. 1967; amd. Sec. 16, Ch. 420, L. 1975; R.C.M. 1947, 93-6802.2.**

Cross-References

Demurrers, pleas, etc., abolished, Rule 7(c), M.R.Civ.P. (see Title 25, ch. 20).

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-504. Complaint. The complaint in justices' courts is a concise statement in writing of the facts constituting the plaintiff's cause of action or a copy of the account, note, bill, bond, or instrument upon which the action is based.

History: **En. Sec. 1522, C. Civ. Proc. 1895; re-en. Sec. 7007, Rev. C. 1907; re-en. Sec. 9640, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 853; re-en. Sec. 9640, R.C.M. 1935; R.C.M. 1947, 93-6803.**

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-505. Answer. The answer may contain a general denial of any or all the material facts stated in the complaint which the defendant believes to be untrue and also a statement, in a plain and direct manner, of any other facts containing a defense or counterclaim upon which an action might be brought by the defendant against the plaintiff in a justice's court. He may file a copy of an account, note, bill, bond, or other instrument as a counterclaim.

History: **En. Sec. 1524, C. Civ. Proc. 1895; re-en. Sec. 7009, Rev. C. 1907; re-en. Sec. 9642, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 855; re-en. Sec. 9642, R.C.M. 1935; R.C.M. 1947, 93-6805.**

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

Answer to order of arrest, 27-16-1006.

25-31-506. Compulsory counterclaim. If the defendant omits to set up a counterclaim in the cases mentioned in 25-31-505, neither he nor his assignee can afterward maintain an action against the plaintiff therefor. If the counterclaim exceeds $3,500, he need not set it up.

History: **En. Sec. 1525, C. Civ. Proc. 1895; re-en. Sec. 7010, Rev. C. 1907; re-en. Sec. 9643, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 856; re-en. Sec. 9643, R.C.M. 1935; R.C.M. 1947, 93-6806; amd. Sec. 2, Ch. 348, L. 1981.**

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

Judgment when counterclaim has been established, 25-31-907.

Counterclaim in small claims procedure, 25-35-606.

25-31-507. Denial of new matter. The new matter contained in the answer or counterclaim is deemed denied by the plaintiff.

History: **En. Sec. 1528, C. Civ. Proc. 1895; re-en. Sec. 7013, Rev. C. 1907; re-en. Sec. 9646, R.C.M. 1921; re-en. Sec. 9646, R.C.M. 1935; R.C.M. 1947, 93-6809.**

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-508 through 25-31-510 reserved.

25-31-511. Pleading an account or instrument. When the cause of action or the defense or counterclaim arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver a copy of the account or instrument to the party demanding it and to state that there is due to him thereon from the adverse party a specified sum, but the court may, at any time, require the original account or instrument to be exhibited to the inspection of the adverse party and a copy to be furnished or, if it be not so exhibited and a copy furnished, may prohibit its being afterwards given in evidence unless it appear that such instrument is not in the possession of the party pleading it or under his control. The court may, at any time, require either party to furnish to the other the items of an account or a bill of particulars.

History: **En. Sec. 588, p. 158, Bannack Stat.; re-en. Sec. 694, p. 175, Cod. Stat. 1871; re-en. Sec. 754, 1st Div. Rev. Stat. 1879; re-en. Sec. 774, 1st Div. Comp. Stat. 1887; en. Sec. 1531, C. Civ. Proc. 1895; re-en. Sec. 7016, Rev. C. 1907; re-en. Sec. 9649, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 886; re-en. Sec. 9649, R.C.M. 1935; R.C.M. 1947, 93-6812.**

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-512. Admission of genuineness of signatures. If the plaintiff annex to his complaint or file with the justice at the time of issuing the summons a copy of the promissory note, bill of exchange, other obligation for the payment of money, or other instrument upon which the action is brought, the defendant shall be deemed to admit the genuineness of all the signatures thereto unless he specifically deny the same in his answer under oath. In case of a counterclaim, the same rule applies to the plaintiff.

History: **En. Sec. 589, p. 159, Bannack Stat.; re-en. Sec. 695, p. 175, Cod. Stat. 1871; re-en. Sec. 755, 1st Div. Rev. Stat. 1879; re-en. Sec. 775, 1st Div. Comp. Stat. 1887; amd. Sec. 1532, C. Civ. Proc. 1895; re-en. Sec. 7017, Rev. C. 1907; re-en. Sec. 9650, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 887; re-en. Sec. 9650, R.C.M. 1935; R.C.M. 1947, 93-6813.**

25-31-513 through 25-31-520 reserved.

25-31-521. Amendment of pleadings. Either party may, at any time before the conclusion of the trial, amend any pleading; but if the amendment is made after the issue is raised at trial and it appears to the satisfaction of the court, upon hearing the argument of the adverse party under oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment must be granted. When an adjournment will be rendered necessary by the amendment, the court may also, in its discretion, require as a condition to the allowance of such amendment, made after issue joined, the payment of costs to the adverse party, to be fixed by the court, not exceeding $20.

History: **En. Sec. 1529, C. Civ. Proc. 1895; re-en. Sec. 7014, Rev. C. 1907; re-en. Sec. 9647, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 859; re-en. Sec. 9647, R.C.M. 1935; R.C.M. 1947, 93-6810(part); amd. Sec. 121, Ch. 575, L. 1981.**

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-522. Answer to amended pleading. When a pleading is amended, the adverse party may answer it within such time, not exceeding 2 days, as the court may allow.

History: En. Sec. 1530, C. Civ. Proc. 1895; re-en. Sec. 7015, Rev. C. 1907; re-en. Sec. 9648, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 860; re-en. Sec. 9648, R.C.M. 1935; amd. Sec. 15, Ch. 420, L. 1975; R.C.M. 1947, 93-6811.

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

Cases treated as a default, 25-31-902.

25-31-523. Variance. A variance between the proof on the trial and the allegations in pleading shall be disregarded as immaterial unless the court be satisfied that the adverse party has been misled to his prejudice thereby.

History: En. Sec. 591, p. 159, Bannack Stat.; re-en. Sec. 697, p. 176, Cod. Stat. 1871; re-en. Sec. 757, 1st Div. Rev. Stat. 1879; re-en. Sec. 777, 1st Div. Comp. Stat. 1887; re-en. Sec. 1533, C. Civ. Proc. 1895; re-en. Sec. 7018, Rev. C. 1907; re-en. Sec. 9651, R.C.M. 1921; re-en. Sec. 9651, R.C.M. 1935; R.C.M. 1947, 93-6814.

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

Part 6

Parties

25-31-601. Who may act as attorney. Parties in justice's court may appear and act in person or by attorney; and any person, except the constable by whom the summons or jury process was served, may act as attorney.

History: En. Sec. 551, p. 151, Bannack Stat.; re-en. Sec. 657, p. 167, Cod. Stat. 1871; re-en. Sec. 717, 1st Div. Rev. Stat. 1879; re-en. Sec. 737, 1st Div. comp. Stat. 1887; amd. Sec. 1503, C. Civ. Proc. 1895; re-en. Sec. 6996, Rev. C. 1907; re-en. Sec. 9629, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 842; re-en. Sec. 9629, R.C.M. 1935; R.C.M. 1947, 93-6704.

Cross-References

Restrictions on practice of law by certain officers, 7-4-2210.

Parties in small claims court proceedings, 25-35-505.

25-31-602. When guardian necessary — how appointed. When a minor or seriously mentally ill or incompetent person is a party, he must appear either by his general guardian, if he has one, or by a guardian ad litem appointed by the justice. When a guardian ad litem is appointed by the justice, he must be appointed as follows:

(1) If the minor or seriously mentally ill or incompetent person is a plaintiff, the appointment must be made before the summons is issued:

(a) in the case of a minor who is 14 or more years old, upon the application of the minor;

(b) in the case of a minor who is less than 14 years old or a seriously mentally ill or incompetent person, upon the application of a relative or friend;

(c) in any case described in subsection (1)(a) or (1)(b) in which no application is made, upon the justice's own motion.

(2) If the minor or seriously mentally ill or incompetent person is a defendant, the appointment must be made at the time the summons is returned or before the answer:

(a) in the case of a minor who is 14 or more years old and who applies before the summons is returned or at the time of the return, upon the application of the minor;

(b) in the case of a minor who is less than 14 years old or a seriously mentally ill or incompetent person, upon the application of a relative or friend or any other party to the action;

(c) in any case described in subsection (2)(a) or (2)(b) in which no application is made, upon the justice's own motion.

History: En. Sec. 555, p. 151, Bannack Stat.; re-en. Sec. 661, p. 169, Cod. Stat. 1871; re-en. Sec. 721, 1st Div. Rev. Stat. 1879; re-en. Sec. 741, 1st Div. Comp. Stat. 1887; en. Sec. 1504, C. Civ. Proc. 1895; re-en. Sec. 6997, Rev. C. 1907; re-en. Sec. 9630, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 843; re-en. Sec. 9630, R.C.M. 1935; R.C.M. 1947, 93-6705; amd. Sec. 122, Ch. 575, L. 1981.

Cross-References

Infants or incompetent persons, Rule 17(c), M.R.Civ.P. (see Title 25, ch. 20).

Substitution of parties — incompetency, Rule 25(b), M.R.Civ.P. (see Title 25, ch. 20).

Right of minor to bring civil action or other proceedings, 27-1-511.

When parental authority ceases, 40-6-234.

Enforcement of minor's rights, 41-1-202.

Part 7

Time of Trial — Postponements

25-31-701. Fixing day of trial — notice. When all parties served with process shall have appeared or some of them have appeared and the remaining defendants have made default, the justice must fix a day for the trial of said cause and notify the plaintiffs and the defendants who have appeared thereof.

History: En. Sec. 1511, C. Civ. Proc. 1895; re-en. Sec. 7004, Rev. C. 1907; re-en. Sec. 9637, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 850; re-en. Sec. 9637, R.C.M. 1935; amd. Sec. 5, Ch. 34, L. 1937; R.C.M. 1947, 93-6712.

Cross-References

Notice of time and place of trial — pleading, 25-31-308.

25-31-702. Trial to be timely. Unless postponed as provided in this part or transferred to another court, the trial of the action may commence at the time set by the court as specified in the notice mentioned in 25-31-701, and after the trial has commenced there must be no adjournment for more than 24 hours at any one time until all the issues therein are disposed of.

History: En. Sec. 1590, C. Civ. Proc. 1895; re-en. Sec. 7033, Rev. C. 1907; re-en. Sec. 9666, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 873; re-en. Sec. 9666, R.C.M. 1935; R.C.M. 1947, 93-7101; amd. Sec. 1, Ch. 125, L. 1979.

25-31-703. Postponement by motion of court. The court may, of its own motion, postpone the trial for not exceeding 4 months for good cause.

History: En. Sec. 1591, C. Civ. Proc. 1895; re-en. Sec. 7034, Rev. C. 1907; re-en. Sec. 9667, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 874; re-en. Sec. 9667, R.C.M. 1935; R.C.M. 1947, 93-7102; amd. Sec. 3, Ch. 569, L. 1985.

25-31-704. Postponement by consent of parties. The court may, by the consent of the parties given in writing or in open court, postpone the trial to a time agreed upon by the parties.

History: En. Sec. 1592, C. Civ. Proc. 1895; re-en. Sec. 7035, Rev. C. 1907; re-en. Sec. 9668, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 875; re-en. Sec. 9668, R.C.M. 1935; R.C.M. 1947, 93-7103.

25-31-705. Postponement upon application of a party — proof required. The trial may be postponed upon the application of either party for a period not exceeding 4 months. The party making the application must prove, by his own oath or otherwise, that he cannot, for want of material testimony which he expects to procure, safely proceed to trial and must show in what respect the testimony expected is material and that he has used due diligence to procure it and has been unable to do so.

History: En. Sec. 596, p. 161, Bannack Stat.; re-en. Sec. 702, p. 177, Cod. Stat. 1871; re-en. Sec. 762, 1st Div. Rev. Stat. 1879; re-en. Sec. 782, 1st Div. Comp. Stat. 1887; en. Sec. 1593, C. Civ. Proc. 1895; re-en. Sec. 7036, Rev. C. 1907; re-en. Sec. 9669, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 876; re-en. Sec. 9669, R.C.M. 1935; R.C.M. 1947, 93-7104(part).

25-31-706. No postponement when expected evidence admitted. The court may require the party making the application to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party thereupon admit that such evidence would be given and that it be considered as actually given on the trial or offered and overruled as improper, the trial must not be postponed.

History: En. Sec. 596, p. 161, Bannack Stat.; re-en. Sec. 702, p. 177, Cod. Stat. 1871; re-en. Sec. 762, 1st Div. Rev. Stat. 1879; re-en. Sec. 782, 1st Div. Comp. Stat. 1887; en. Sec. 1593, C. Civ. Proc. 1895; re-en. Sec. 7036, Rev. C. 1907; re-en. Sec. 9669, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 876; re-en. Sec. 9669, R.C.M. 1935; R.C.M. 1947, 93-7104(part).

25-31-707. Procedure when defendant under arrest. (1) If the application is on the part of the plaintiff and the defendant is under arrest, a postponement for more than 3 hours discharges the defendant from custody; but the action may proceed, notwithstanding, and the defendant is subject to arrest on execution in the same manner as if he had not been discharged.

(2) If the application is on the part of a defendant under arrest, before it can be granted he must execute an undertaking, with two or more sufficient sureties to be approved by and in a sum to be fixed by the justice, to the effect that he will render himself amenable to the process of the court during the pendency of the action and to such as may be issued to enforce the judgment therein, or that the sureties will pay to the plaintiff the amount of any judgment which he may recover in the action, not exceeding the amount specified in the undertaking. On filing the undertaking specified in this subsection, the justice may order the defendant discharged from custody.

History: En. Sec. 596, p. 161, Bannack Stat.; re-en. Sec. 702, p. 177, Cod. Stat. 1871; re-en. Sec. 762, 1st Div. Rev. Stat. 1879; re-en. Sec. 782, 1st Div. Comp. Stat. 1887; en. Sec. 1593, C. Civ. Proc. 1895; re-en. Sec. 7036, Rev. C. 1907; re-en. Sec. 9669, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 876; re-en. Sec. 9669, R.C.M. 1935; R.C.M. 1947, 93-7104(2), (3).

Cross-References

Defendant to be taken before Justice of the Peace immediately, 27-16-1003.

25-31-708. Deposition of witnesses upon postponement. The party making the application must, if required by the adverse party, consent that the testimony of any witness of such adverse party who is in attendance may be then taken by deposition before the justice and that the testimony so taken may be read on trial with the same effect and subject to the objections as if the witness were produced.

History: **En. Sec. 596, p. 161, Bannack Stat.; re-en. Sec. 702, p. 177, Cod. Stat. 1871; re-en. Sec. 762, 1st Div. Rev. Stat. 1879; re-en. Sec. 782, 1st Div. Comp. Stat. 1887; en. Sec. 1593, C. Civ. Proc. 1895; re-en. Sec. 7036, Rev. C. 1907; re-en. Sec. 9669, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 876; re-en. Sec. 9669, R.C.M. 1935; R.C.M. 1947, 93-7104(part).**

Cross-References

Depositions, 25-31-114.

25-31-709. Time limit on adjournment — undertaking. No adjournment may be granted upon the application of either party for a period longer than 10 days unless the opposite party consents or the party applying files an undertaking, in an amount fixed by the justice, with two sureties to be approved by the justice, to the effect that they will pay to the opposite party the amount of any judgment which may be recovered against the party applying, not exceeding the sum specified in the undertaking.

History: **En. Sec. 598, p. 162, Bannack Stat.; re-en. Sec. 704, p. 178, Cod. Stat. 1871; re-en. Sec. 764, 1st Div. Rev. Stat. 1879; re-en. Sec. 784, 1st Div. Comp. Stat. 1887; amd. Sec. 1594, C. Civ. Proc. 1895; re-en. Sec. 7037, Rev. C. 1907; re-en. Sec. 9670, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 877; re-en. Sec. 9670, R.C.M. 1935; R.C.M. 1947, 93-7105; amd. Sec. 123, Ch. 575, L. 1981.**

Part 8

Trial

25-31-801. Issue defined, types of issues. Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party and is controverted by the other. They are of two kinds:

(1) of law; and

(2) of fact.

History: **En. Sec. 1600, C. Civ. Proc. 1895; re-en. Sec. 7038, Rev. C. 1907; re-en. Sec. 9671, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 878; re-en. Sec. 9671, R.CM. 1935; R.C.M. 1947, 93-7201.**

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-802. When issues of fact arise. An issue of fact arises:

(1) whenever a material allegation in the complaint is controverted by the answer; and

(2) whenever the answer contains new matter which raises questions of fact and not merely an issue of law.

History: **En. Sec. 1602, C. Civ. Proc. 1895; re-en. Sec. 7040, Rev. C. 1907; re-en. Sec. 9673, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 880; re-en. Sec. 9673, R.C.M. 1935; R.C.M. 1947, 93-7203; amd. Sec. 124, Ch. 575, L. 1981.**

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-803. By whom issues tried. (1) An issue of law must be tried by the court.

(2) An issue of fact must be tried by a jury unless a jury is waived, in which case it must be tried by the court.

History: En. Secs. 1603, 1604, C. Civ. Proc. 1895; re-en. Secs. 7041, 7042, Rev. C. 1907; re-en. Secs. 9674, 9675, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 881, 882; re-en. Secs. 9674, 9675, R.C.M. 1935; R.C.M. 1947, 93-7204, 93-7205.

Cross-References

Right to trial by jury, Art. II, sec. 26, Mont. Const.

Number of jurors in Justices' Courts, 3-15-107.

25-31-804. Waiver of jury trial. A jury may be waived by:

(1) consent of parties entered in the docket;

(2) a failure of either party to demand a jury before the commencement of the trial of an issue of fact;

(3) the failure of either party to appear at the time fixed for the trial of an issue of fact.

History: En. Sec. 1605, C. Civ. Proc. 1895; re-en. Sec. 7043, Rev. C. 1907; re-en. Sec. 9676, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 883; re-en. Sec. 9676, R.C.M. 1935; R.C.M. 1947, 93-7206.

Cross-References

Demand for jury trial to be entered in docket, 3-10-501.

Juries in inferior courts, Title 3, ch. 15, part 7.

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-805 through 25-31-810 reserved.

25-31-811. Trial after nonappearance of a party. If either party fails to appear at the time fixed for trial, the trial may proceed at the request of the adverse party.

History: En. Sec. 600, p. 162, Bannack Stat.; re-en. Sec. 706, p. 178, Cod. Stat. 1871; re-en. Sec. 766, 1st Div. Rev. Stat. 1879; re-en. Sec. 786, 1st Div. Comp. Stat. 1887; amd. Sec. 1606, C. Civ. Proc. 1895; re-en. Sec. 7044, Rev. C. 1907; re-en. Sec. 9677, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 884; re-en. Sec. 9677, R.C.M. 1935; R.C.M. 1947, 93-7207.

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-812. Challenges to jurors. The challenges are either peremptory or for cause:

(1) Each party is entitled to two peremptory challenges. They shall be exercised by the plaintiff first striking one and the defendant then striking one, and so on until each side has exhausted or waived his rights.

(2) Either party may challenge for cause on any grounds set forth in 25-7-223. Challenges for cause must be tried by the justice.

History: Ap. p. Sec. 604, p. 162, Bannack Stat.; re-en. Sec. 710, p. 178, Cod. Stat. 1871; re-en. Sec. 770, 1st Div. Rev. Stat. 1879; re-en. Sec. 790, 1st Div. Comp. Stat. 1887; amd. Sec. 1607, C. Civ. Proc. 1895; re-en. Sec. 7045, Rev. C. 1907; re-en. Sec. 9678, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 885; re-en. Sec. 9678, R.C.M. 1935; Sec. 93-7208, R.C.M. 1947; Ap. p. Sec. 224, C. Civ. Proc. 1895; re-en. Sec. 6334, Rev. C. 1907; re-en. Sec. 8887, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 194; re-en. Sec. 8887, R.C.M. 1935; amd. Sec. 4, Ch. 203, L. 1939; amd. Sec. 1, Ch. 293, L. 1971; Sec. 93-1205, R.C.M. 1947; R.C.M. 1947, 93-1205(part), 93-7208.

Cross-References

Number of jurors in Justices' Courts, 3-15-107.

Juries in inferior courts, Title 3, ch. 15, part 7.

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

Part 9

Judgment

25-31-901. Procedure upon default. If the defendant fails to appear or answer within the time specified in the summons, then the defendant shall be in default and his default shall be entered accordingly by the court. Evidence may then be submitted and judgment rendered and entered in accordance with the statement in the summons or as prayed for in the complaint at any time within 90 days from the date of the entry of such default of the defendant.

History: En. Sec. 1580, C. Civ. Proc. 1895; re-en. Sec. 7031, Rev. C. 1907; re-en. Sec. 9664, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 871; re-en. Sec. 9664, R.C.M. 1935; amd. Sec. 1, Ch. 34, L. 1937; amd. Sec. 2, Ch. 91, L. 1939; R.C.M. 1947, 93-7001; amd. Sec. 125, Ch. 575, L. 1981.

Cross-References

Docket to contain default, 3-10-501, 3-10-1005.

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

Time for answer or appearance, 25-31-406.

25-31-902. Cases treated as a default. In the following cases the same proceedings must be had and judgment must be rendered in like manner as if the defendant had failed to appear and answer or demur:

(1) if the complaint has been amended and the defendant fails to answer it as amended within the time allowed by the court;

(2) if the demurrer to the complaint is overruled and the defendant fails to answer at once;

(3) if the demurrer to the answer is sustained and the defendant fails to amend the answer within the time allowed by the court.

History: En. Sec. 1581, C. Civ. Proc. 1895; re-en. Sec. 7032, Rev. C. 1907; re-en. Sec. 9665, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 872; re-en. Sec. 9665, R.C.M. 1935; R.C.M. 1947, 93-7002.

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

Demurrers abolished, 25-31-503.

Answer to amended pleading, 25-31-522.

25-31-903. Judgment of dismissal without prejudice. Judgment that the action be dismissed without prejudice to a new action may be entered with costs in the following cases:

(1) when the plaintiff voluntarily dismisses the action, at or before the close of his evidence, when there is no counterclaim;

(2) when he fails to appear at any time within 5 days after default has been entered or at the time to which the action has been postponed;

(3) when, after a demurrer to the complaint has been sustained, the plaintiff fails to amend it within the time allowed by the court;

(4) when it is objected at the trial and appears by the evidence that the action is brought in the wrong county.

History: En. Sec. 605, p. 163, Bannack Stat.; re-en. Sec. 711, p. 179, Cod. Stat. 1871; re-en. Sec. 771, 1st Div. Rev. Stat. 1879; re-en. Sec. 791, 1st Div. Comp. Stat. 1887; amd. Sec. 1621, C. Civ. Proc. 1895; re-en. Sec. 7047, Rev. C. 1907; re-en. Sec. 9680, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 890; re-en. Sec. 9680, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1937; amd. Sec. 19, Ch. 491, L. 1973; R.C.M. 1947, 93-7302(part).

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

Demurrers abolished, 25-31-503.

25-31-904. Entry of judgment. When a trial by jury has been had, judgment must be entered by the justice, at once, in conformity with the verdict. When the trial is by the court, judgment must be entered at the close of the trial.

History: En. Sec. 608, p. 163, Bannack Stat.; re-en. Sec. 714, p. 180, Cod. Stat. 1871; re-en. Sec. 774, 1st Div. Rev. Stat. 1879; re-en. Sec. 794, 1st Div. Comp. Stat. 1887; amd. Secs. 1622, 1623, C. Civ. Proc. 1895; re-en. Secs. 7048, 7049, Rev. C. 1907; re-en. Secs. 9681, 9682, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 891, 892; re-en. Secs. 9681, 9682, R.C.M. 1935; R.C.M. 1947, 93-7303, 93-7304.

Cross-References

Judgment to be entered in docket, 3-10-501, 3-10-1005.

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-905. Judgment when only part of defendants served. If the action be on a contract against two or more defendants and the summons be served on one or more but not on all:

(1) the judgment shall be entered up only against those who were served if the contract be a several or a joint and several contract; but

(2) if the contract be a joint contract only, the judgment shall be entered up against all the defendants but shall only be enforced against the joint property of all and the separate property of the defendants served.

History: En. Sec. 610, p. 163, Bannack Stat.; re-en. Sec. 715, p. 180, Cod. Stat. 1871; re-en. Sec. 775, 1st Div. Rev. Stat. 1879; re-en. Sec. 795, 1st Div. Comp. Stat. 1887; re-en. Sec. 1625, C. Civ. Proc. 1895; re-en. Sec. 7051, Rev. C. 1907; re-en. Sec. 9684, R.C.M. 1921; re-en. Sec. 9684, R.C.M. 1935; R.C.M. 1947, 93-7306.

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-906. Judgment when amount found due exceeds the jurisdiction of the court. When the amount found due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess and judgment may be entered for the residue.

History: En. Sec. 610, p. 163, Bannack Stat.; re-en. Sec. 716, p. 180, Cod. Stat. 1871; re-en. Sec. 776, 1st Div. Rev. Stat. 1879; re-en. Sec. 796, 1st Div. Comp. Stat. 1887; re-en. Sec. 1626, C. Civ. Proc. 1895; re-en. Sec. 7052, Rev. C. 1907; re-en. Sec. 9685, R.C.M. 1921; Cal. C. Civ. Pro. Sec. 894; re-en. Sec. 9685, R.C.M. 1935; R.C.M. 1947, 93-7307.

Cross-References

Civil jurisdiction, 3-10-301.

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-907. Judgment when counterclaim has been established. Where a counterclaim is established which equals the plaintiff's demand, the judgment must be in favor of the defendant. Where it is less than the plaintiff's demand, the plaintiff must have judgment for the residue only. Where it exceeds the plaintiff's demand, the defendant must have judgment for the excess.

History: En. Sec. 1627, C. Civ. Proc. 1895; re-en. Sec. 7053, Rev. C. 1907; re-en. Sec. 9686, R.C.M. 1921; re-en. Sec. 9686, R.C.M. 1935; R.C.M. 1947, 93-7308.

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

Permissible pleadings, 25-31-502.

Answer, 25-31-505.

Compulsory counterclaim, 25-31-506.

25-31-908. Judgment when defendant subject to arrest. When the judgment is rendered in a case where the defendant is subject to arrest and imprisonment thereon, the fact that the defendant is so subject must be stated in the judgment.

History: En. Sec. 612, p. 164, Bannack Stat.; re-en. Sec. 718, p. 179, Cod. Stat. 1871; re-en. Sec. 778, 1st Div. Rev. Stat. 1879; re-en. Sec. 798, 1st Div. Comp. Stat. 1887; amd. Sec. 1624, C. Civ. Proc. 1895; re-en. Sec. 7050, Rev. C. 1907; re-en. Sec. 9683, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 893; re-en. Sec. 9683, R.C.M. 1935; R.C.M. 1947, 93-7305(part).

Cross-References

Costs in Justice's Court, Title 25, ch. 31, part 10.

25-31-909 and 25-31-910 reserved.

25-31-911. Abstract of judgment. The justice, on the demand of a party in whose favor judgment is rendered, must give him an abstract of the judgment in substantially the following form (filling blanks according to the facts):

"State of Montana
County of ....

...., plaintiff
vs.
...., defendant

In justice's court, before ...., justice of the peace, ... County, ..., 19.. (inserting date of abstract). Judgment entered for plaintiff (or defendant) for $...., on the .... day of ....., I certify that the foregoing is a correct abstract of a judgment rendered in said action in my court [or (as the case may be) in the court of ...., justice of the peace, as it appears by his docket now in my possession as his successor in office].

...., Justice of the Peace."

History: En. Sec. 614, p. 164, Bannack Stat.; re-en. Sec. 720, p. 180, Cod. Stat. 1871; amd. Sec. 1, p. 38, L. 1876; re-en. Sec. 780, p. 184, 1st Div. Rev. Stat. 1879; re-en. Sec. 800, 1st Div. Comp. Stat. 1887; en. Sec. 1630, C. Civ. Proc. 1895; re-en. Sec. 7056, Rev. C. 1907; re-en. Sec. 9689, R.C.M. 1921; Cal. C. Civ. Proc. Sec 897; re-en. Sec. 9689, R.C.M. 1935; amd. Sec. 20, Ch. 491, L. 1973; R.C.M. 1947, 93-7311.

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-912. Filing and docketing of judgment in district court. The abstract may be filed in the office of the clerk of the district court of the county in which the judgment was rendered and the judgment docketed in the judgment docket of the district court thereof. The time of the receipt of the abstract by the clerk must be noted by him thereon and entered in the docket.

History: En. Sec. 614, p. 164, Bannack Stat.; re-en. Sec. 720, p. 180, Cod. Stat. 1871; amd. Sec. 1, p. 38, L. 1876; re-en. Sec. 780, p. 184, 1st Div. Rev. Stat. 1879; re-en. Sec. 800, 1st Div. Comp. Stat. 1887; en. Sec. 1631, C. Civ. Proc. 1895; re-en. Sec. 7057, Rev. C. 1907; re-en. Sec. 9690, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 898; re-en. Sec. 9690, R.C.M. 1935; R.C.M. 1947, 93-7312.

Cross-References

Contents of docket, 3-10-501.

Docket entries — small claims procedure, 3-10-1005.

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-913. Issuance of execution by clerk of district court. From the time of docketing in the clerk's office, execution may be issued thereon by the clerk to the sheriff of any county in the state in the same manner and with like effect as if issued on a judgment of the district court.

History: En. Sec. 614, p. 164, Bannack Stat.; re-en. Sec. 720, p. 180, Cod. Stat. 1871; amd. Sec. 1, p. 38, L. 1876; re-en. Sec. 780, p. 184, 1st Div. Rev. Stat. 1879; re-en. Sec. 800, 1st Div. Comp. Stat. 1887; en. Sec. 1632, C. Civ. Proc. 1895; amd. Sec. 1, p. 242, L. 1897; re-en. Sec. 7058, Rev. C. 1907; re-en. Sec. 9691, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 899; re-en. Sec. 9691, R.C.M. 1935; R.C.M. 1947, 93-7313.

Cross-References

Execution to be shown on docket, 3-10-501.

Execution of judgment, Title 25, ch. 13.

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-914. Lien on real property. The judgment rendered in a justice's court creates no lien upon any lands of the defendant unless such abstract is filed as aforesaid in the office of the clerk of the district court of the county in which the lands are situated. When so filed and from the time of filing, the judgment becomes a lien upon all real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time or which he may afterwards and before the lien expires acquire. The lien continues for 6 years unless the judgment be previously satisfied.

History: En. Sec. 614, p. 164, Bannack Stat.; re-en. Sec. 720, p. 180, Cod. Stat. 1871; amd. Sec. 1, p. 38, L. 1876; re-en. Sec. 780, p. 184, 1st Div. Rev. Stat. 1879; re-en. Sec. 800, 1st Div. Comp. Stat. 1887; en. Sec. 1633, C. Civ. Proc. 1895; amd. Sec. 2, p. 243, L. 1897; re-en. Sec. 7059, Rev. C. 1907; re-en. Sec. 9692, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 900; re-en. Sec. 9692, R.C.M. 1935; R.C.M. 1947, 93-7314.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-915. Relief from judgment. The court may, on such terms as may be just and on the payment of costs, relieve a party from any judgment taken against him by mistake, inadvertence, surprise, or excusable neglect, but the application for such relief must be made within 10 days after the entry of the judgment and upon an affidavit showing good cause therefor.

History: En. Sec. 1529, C. Civ. Proc. 1895; re-en. Sec. 7014, Rev. C. 1907; re-en. Sec. 9647, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 859; re-en. Sec. 9647, R.C.M. 1935; R.C.M. 1947, 93-6810(part).

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

Part 10

Costs

Part Cross-References

Fines, penalties, forfeitures, fees, and costs in Justices' Courts, Title 3, ch. 10, part 6.

25-31-1001. Who entitled to costs. The prevailing party in justices' courts is entitled to costs of the action and also of all proceedings taken by him in aid of execution issued upon any judgment recovered therein.

History: En. Sec. 1685, C. Civ. Proc. 1895; re-en. Sec. 7083, Rev. C. 1907; re-en. Sec. 9716, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 924; amd. Sec. 19, Ch. 177, L. 1935; re-en. Sec. 9716, R.C.M. 1935; amd. Sec. 1, Ch. 156, L. 1937; R.C.M. 1947, 93-7706.

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

When fees payable, 25-31-113.

Confession of judgment to include costs, 27-9-104.

25-31-1002. How costs taxed. In a justice's or city court, no cost bill need be filed, but the justice or judge must tax the same and make an itemized statement of all the costs incurred by each party in his docket.

History: En. Sec. 1868, C. Civ. Proc. 1895; re-en. Sec. 7171, Rev. C. 1907; re-en. Sec. 9804, R.C.M. 1921; re-en. Sec. 9804, R.C.M. 1935; R.C.M. 1947, 93-8620(part).

Cross-References

Contents of docket, 3-10-501.

25-31-1003. Costs to be included in judgment. The justice must tax and include in the judgment the costs allowed by law to the prevailing party.

History: En. Sec. 643, p. 171, Bannack Stat.; re-en. Sec. 748, p. 186, Cod. Stat. 1871; re-en. Sec. 808, 1st Div. Rev. Stat. 1879; re-en. Sec. 828, 1st Div. Comp. Stat. 1887; re-en. Sec. 1629, C. Civ. Proc. 1895; re-en. Sec. 7055, Rev. C. 1907; re-en. Sec. 9688, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 896; re-en. Sec. 9688, R.C.M. 1935; R.C.M. 1947, 93-7310.

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

Confession of judgment to include costs, 27-9-104.

25-31-1004. Jurors' fees. In justices' and city courts, the fees paid to jurors must be taxed against the unsuccessful party.

History: En. Sec. 1868, C. Civ. Proc. 1895; re-en. Sec. 7171, Rev. C. 1907; re-en. Sec. 9804, R.C.M. 1921; re-en. Sec. 9804, R.C.M. 1935; R.C.M. 1947, 93-8620(part).

Cross-References

Fees in courts not of record, 3-15-203.

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-1005. Costs of transferring papers — change of venue. The costs and fees of transmitting the pleading and papers when an order is made transferring an action or proceeding for trial and of filing the papers anew must be paid by the party at whose instance the order was made; except that the party filing the complaint must pay all costs and fees of filing the papers anew and all costs and fees, including reasonable attorneys' fees to be fixed by the court, incurred by the defendant by reason of the change of venue motion and hearing when:

(1) the action is an action upon a contract, express or implied, for the direct payment of money and no claim contained in the complaint exceeds $1,000;

(2) the county designated in the complaint is not the proper county; and

(3) the plaintiff will not within 10 days after request stipulate for change of venue and defendant files a motion for such change and such motion is thereafter granted.

History: En. Sec. 64, p. 53, L. 1877; re-en. Sec. 64, 1st Div. Rev. Stat. 1879; re-en. Sec. 64, 1st Div. Comp. Stat. 1887; re-en. Sec. 617, C. Civ. Proc. 1895; re-en. Sec. 6508, Rev. C. 1907; re-en. Sec. 9100, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 399; re-en. Sec. 9100, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1971; R.C.M. 1947, 93-2908(part).

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

Fees, 25-31-112.

Change of venue, Title 25, ch. 31, part 3.

Part 11

Execution of Judgment

25-31-1101. When justice may issue execution. Execution for the enforcement of a judgment of a justice's court may be issued by the clerk who entered the judgment or his successor in office, on the application of the party entitled thereto, at any time within 6 years from the entry of judgment.

History: En. Sec. 615, p. 165, Bannack Stat.; re-en. Sec. 721, p. 181, Cod. Stat. 1871; re-en. Sec. 781, 1st Div. Rev. Stat. 1879; re-en. Sec. 801, 1st Div. Comp. Stat. 1887; amd. Sec. 1640, C. Civ. Proc. 1895; re-en. Sec. 7060, Rev. C. 1907; amd. Sec. 1, Ch. 38, L. 1921; re-en. Sec. 9693, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 901; re-en. Sec. 9693, R.C.M. 1935; R.C.M. 1947, 93-7401; amd. Sec. 126, Ch. 575, L. 1981.

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-1102. Form and content of execution. The execution must be directed to the sheriff or to a constable of the county and must be subscribed by the justice and bear the date of the day of its issuance. It must intelligibly refer to the judgment by stating the names of the parties; the name of the justice before whom, the county where, and the time when it was rendered; the amount of the judgment if it be for money; and if less than the whole is due, the true amount due thereon. It must contain, in like cases, similar directions to the sheriff or constable as are required by the provisions of chapter 13 in an execution to the sheriff, except that it shall not direct the officer to in any manner levy upon or satisfy the judgment or any interest thereon from any real property.

History: En. Sec. 616, p. 165, Bannack Stat.; amd. Sec. 722, p. 181, Cod. Stat. 1871; re-en. Sec. 782, 1st Div. Rev. Stat. 1879; re-en. Sec. 802, 1st Div. Comp. Stat. 1887; amd. Sec. 1641, C. Civ. Proc. 1895; amd. Sec. 1641, p. 243, L. 1897; re-en. Sec. 7061, Rev. C. 1907; re-en. Sec. 9694, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 902; re-en. Sec. 9694, R.C.M. 1935; amd. Sec. 21, Ch. 491, L. 1973; R.C.M. 1947, 93-7402.

Cross-References

Contents of writ, Title 25, ch. 13, part 3.

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

Constables governed by law prescribing Sheriffs' duties, 25-31-702.

25-31-1103. Renewal and reissuance of execution. An execution may, at the request of the judgment creditor, be renewed before the expiration of the time fixed for its return, by the word "renewed" written thereon, with the date thereof, and subscribed by the justice. Such renewal has the effect of an original issue and may be repeated as often as necessary. If an execution is returned unsatisfied, another may be afterward issued.

History: En. Sec. 1642, C. Civ. Proc. 1895; re-en. Sec. 7062, Rev. C. 1907; re-en. Sec. 9695, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 903; re-en. Sec. 9695, R.C.M. 1935; R.C.M. 1947, 93-7403.

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-1104. Manner of execution. The sheriff or constable to whom the execution is directed must execute the same in the same manner as the sheriff is required by the provisions of chapter 13 to proceed upon executions directed to him; and the constable, when the execution is directed to him, is vested for that purpose with all the powers of the sheriff.

History: En. Sec. 617, p. 165, Bannack Stat.; re-en. Sec. 723, p. 181, Cod. Stat. 1871; re-en. Sec. 783, 1st Div. Rev. Stat. 1879; re-en. Sec. 803, 1st Div. Comp. Stat. 1887; amd. Sec. 1643, C. Civ. Proc. 1895; re-en. Sec. 7063, Rev. C. 1907; re-en. Sec. 9696, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 904; re-en. Sec. 9696, R.C.M. 1935; R.C.M. 1947, 93-7404.

Cross-References

Constables governed by law prescribing Sheriffs' duties, 3-10-702.

Execution and return of writ, Title 25, ch. 13, part 4.

25-31-1105. Proceedings in aid of execution. Section 25-13-502 and part 1 of chapter 14, except 25-14-106, are applicable to justices' courts, the word "constable" being substituted, to that end, for the word "sheriff" and the word "justice" for the word "judge".

History: En. Sec. 1644, C. Civ. Proc. 1895; re-en. Sec. 7064, Rev. C. 1907; re-en. Sec. 9697, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 905; re-en. Sec. 9697, R.C.M. 1935; R.C.M. 1947, 93-7405.

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-1106. Discharge of imprisoned judgment debtor. The provisions of part 3 of chapter 14 in relation to the examination and discharge of a defendant imprisoned on execution in a civil action shall apply to justices' courts, and justices of the peace shall have the same powers in their courts as are by said sections granted to the judge.

History: En. Sec. 673, p. 172, Cod. Stat. 1871; re-en. Sec. 733, 1st Div. Rev. Stat. 1879; re-en. Sec. 753, 1st Div. Comp. Stat. 1887; re-en. Sec. 1546, C. Civ. Proc. 1895; re-en. Sec. 7025, Rev. C. 1907; re-en. Sec. 9658, R.C.M. 1921; re-en. Sec. 9658, R.C.M. 1935; R.C.M. 1947, 93-6907.

Cross-References

Effect of Justice Courts rules on this section, see compiler's comment entitled "Conflicts With Statutes", set out under Title 25, ch. 22, Rule 1.

25-31-1107 through 25-31-1110 reserved.

25-31-1111. Collection of judgment against county or county officer. When a judgment is rendered against the county or against any county officer in an action prosecuted against him in his name of office, when the same is to be paid by the county, no execution must issue upon the judgment, but the same must be paid as other county charges. When so collected, the same must be paid by the county treasurer to the proper person to whom the same is adjudged, upon the delivery of a proper voucher therefor.

History: En. Sec. 342, 5th Div. Rev. Stat. 1879; re-en. Sec. 751, 5th Div. Comp. Stat. 1887; amd. Sec. 4199, Pol. C. 1895; re-en. Sec. 2879, Rev. C. 1907; re-en. Sec. 4450, R.C.M. 1921; re-en. Sec. 4450, R.C.M. 1935; R.C.M. 1947, 16-811.

Cross-References

Payments of judgments against governmental entities, 2-9-316.

Judgments against county or county officers, 25-13-205.

Garnishment of public officers, 25-13-504.

Governmental property exempt from execution, 25-13-613.

CHAPTER 32

PROCEDURE IN CITY COURTS

Part 1 — General Provisions

25-32-101. Applicability of laws on procedure in justices' courts.
25-32-102. Commencement of action — complaint.
25-32-103. Summons.
25-32-104. Answer and immediate trial.

Chapter Cross-References

Courts and judicial officers generally, Title 3, ch. 1.

City Courts, Title 3, ch. 11.

Civil actions — form and commencement, Title 25, ch. 1, part 1.

Part 1

General Provisions

25-32-101. Applicability of laws on procedure in justices' courts. All proceedings in civil actions in city courts must, except as in this chapter otherwise provided, be conducted in the same manner as civil actions in justices' courts and conform to the Montana Justice Courts Rules of Civil Procedure (Title 25, chapter 22).

History: En. Sec. 1703, C. Civ. Proc. 1895; re-en. Sec. 7095, Rev. C. 1907; re-en. Sec. 9728, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 933; re-en. Sec. 9728, R.C.M. 1935; R.C.M. 1947, 93-7804; amd. Sec. 9, Ch. 543, L. 1987.

Compiler's Comments

1987 Amendment: At end of section inserted "and conform to the Montana Justice Courts Rules of Civil Procedure (Title 25, chapter 22)".

25-32-102. Commencement of action — complaint. (1) Civil actions in city courts are commenced by filing a complaint as provided under the Montana Justice Courts Rules of Civil Procedure (Title 25, chapter 22).

(2) The complaint must set forth a concise statement of the facts constituting the cause of action.

(3) A complaint under 3-11-103 must set forth the interest of the city in the action. An allegation that the cause of action arose from a violation of a city ordinance or failure to perform a duty required by city ordinance is a sufficient interest of the city.

(4) The ordinance may be referred to by its title, section, and number.

History: En. Sec. 1700, C. Civ. Proc. 1895; re-en. Sec. 7092, Rev. C. 1907; re-en. Sec. 9725, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 929; re-en. Sec. 9725, R.C.M. 1935; R.C.M. 1947, 93-7801; amd. Sec. 10, Ch. 543, L. 1987.

Compiler's Comments

1987 Amendment: Substituted present (1) for former language that read: "Civil actions in city courts are commenced by filing a complaint setting forth the violation of the ordinance complained of, with such particulars of time, place, and manner of violation as to enable the defendant to understand distinctly the character of the violation complained of and to answer the complaint"; inserted (2) and (3); and in (4) made minor changes in phraseology.

Cross-References

City Court jurisdiction, Title 3, ch. 11, part 1.

Who named as plaintiff, 3-11-302.

25-32-103. Summons. Immediately after filing the complaint, a summons must be issued, directed to the defendant and returnable as provided under the Montana Justice Courts Rules of Civil Procedure (Title 25, chapter 22).

History: En. Sec. 1701, C. Civ. Proc. 1895; re-en. Sec. 7093, Rev. C. 1907; re-en. Sec. 9726, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 930; re-en. Sec. 9726, R.C.M. 1935; R.C.M. 1947, 93-7802; amd. Sec. 11, Ch. 543, L. 1987.

Compiler's Comments

1987 Amendment: Near middle of section, after "and returnable", substituted remainder of section for "either immediately or at any time designated therein, not exceeding 4 days from the date of its issuing".

25-32-104. Answer and immediate trial. On the return of the summons, the defendant shall file a written answer to the complaint. The answer must conform to the Montana Justice Courts Rules of Civil Procedure (Title 25, chapter 22). Upon return of the answer the case must be tried as in justice's court.

History: En. Sec. 1702, C. Civ. Proc. 1895; re-en. Sec. 7094, Rev. C. 1907; re-en. Sec. 9727, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 931; re-en. Sec. 9727, R.C.M. 1935; R.C.M. 1947, 93-7803; amd. Sec. 12, Ch. 543, L. 1987.

Compiler's Comments

1987 Amendment: Substituted present language for former language that read: "On the return of the summons, the defendant may answer the complaint. The answer may be oral or in writing, and immediately thereafter the case must be tried unless, for good cause shown, an adjournment is granted."

CHAPTER 33

APPEAL TO DISTRICT COURT FROM JUSTICES' AND CITY COURTS

Part 1 — Filing the Appeal

25-33-101. Exclusive method of review.
25-33-102. Time for appeal.
25-33-103. How appeal taken.
25-33-104. Papers to be transmitted.

Part 2 — Undertaking on Appeal—Stay of Execution

25-33-201. Undertaking on appeal.
25-33-202. Undertaking when prevailing party appeals.
25-33-203. Justification of sureties.
25-33-204. Stay of execution when undertaking filed.
25-33-205. Deposit of money in lieu of undertaking.
25-33-206. Waiver of undertaking or deposit.
25-33-207. Defective undertaking.

Part 3 — Proceedings in District Court

25-33-301. Trial de novo — pleadings, conduct of trial.
25-33-302. Procedure upon reversal on issue of law.
25-33-303. Appeal from judgment by default.
25-33-304. Dismissal of appeal upon delay — costs and damages.
25-33-305. Costs when appeal unsuccessful.
25-33-306. Effect of judgment of district court.

Chapter Cross-References
Appeal of criminal cases from Justices' or City Courts, 46-17-311.

Part 1

Filing the Appeal

Part Cross-References
City Attorney to prosecute, 3-11-301.

25-33-101. Exclusive method of review. A judgment or order in a civil action, except when expressly made final by this code, may be reviewed as prescribed in this chapter and not otherwise. A party aggrieved may appeal in the cases prescribed in this chapter.

History: Ap. p. Sec. 248, p. 94, Bannack Stat.; re-en. Sec. 317, p. 199, L. 1867; re-en. Sec. 366, p. 107, Cod. Stat. 1871; re-en. Sec. 405, p. 149, L. 1877; re-en. Sec. 405, 1st Div. Rev. Stat. 1879; re-en. Sec. 418, 1st Div. Comp. Stat. 1887; re-en. Sec. 1720, C. Civ. Proc. 1895; re-en. Sec. 7096, Rev. C. 1907; re-en. Sec. 9729, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 936; re-en. Sec. 9729, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; Sec. 93-8001, R.C.M. 1947; Ap. p. Sec. 248, p. 94, Bannack Stat.; amd. Sec. 319, p. 199, L. 1867; re-en. Sec. 368, p. 107, Cod. Stat. 1871; re-en. Sec. 407, p. 150, L. 1877; re-en. Sec. 407, 1st Div. Rev. Stat. 1879; re-en. Sec. 420, 1st Div. Comp. Stat. 1887; re-en. Sec. 1721, C. Civ. Proc. 1895; re-en. Sec. 7097, Rev. C. 1907; re-en. Sec. 9730, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 938; re-en. Sec. 9730, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; Sec. 93-8002, R.C.M. 1947; R.C.M. 1947, 93-8001(part), 93-8002(part).

25-33-102. Time for appeal. Any party dissatisfied with the judgment rendered in a civil action in a city or justice's court may appeal therefrom to the district court of the county at any time within 30 days after the rendition of the judgment.

History: En. Sec. 637, p. 169, Bannack Stat.; re-en. Sec. 742, p. 185, Cod. Stat. 1871; re-en. Sec. 802, 1st Div. Rev. Stat. 1879; re-en. Sec. 822, 1st Div. Comp. Stat. 1887; amd. Sec. 1760, C. Civ. Proc. 1895; re-en. Sec. 7121, Rev. C. 1907; amd. Sec. 1, Ch. 4, L. 1911; re-en. Sec. 9754, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 974; re-en. Sec. 9754, R.C.M. 1935; R.C.M. 1947, 93-7901(part).

Cross-References
Kinds of jurisdiction, 3-5-301.
Appellate jurisdiction, 3-5-303.

25-33-103. How appeal taken. The appeal is taken by serving a copy of the notice of appeal on the adverse party or his attorney and by filing the original notice of appeal with the justice or judge. The order of serving and filing is immaterial.

History: En. Sec. 637, p. 169, Bannack Stat.; re-en. Sec. 742, p. 185, Cod. Stat. 1871; re-en. Sec. 802, 1st Div. Rev. Stat. 1879; re-en. Sec. 822, 1st Div. Comp. Stat. 1887; amd. Sec. 1760, C. Civ. Proc. 1895; re-en. Sec. 7121, Rev. C. 1907; amd. Sec. 1, Ch. 4, L. 1911; re-en. Sec. 9754, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 974; re-en. Sec. 9754, R.C.M. 1935; R.C.M. 1947, 93-7901(part).

25-33-104. Papers to be transmitted. Upon the filing of the notice of appeal and the undertaking as required in 25-33-201, 25-33-203, and 25-33-205, the justice or judge must, within 10 days, upon the payment of the fees therefor, transmit to the clerk of the district court a certified copy of his docket, the pleadings, all notices, motions, and other papers filed in the cause, the notice of appeal, and the undertaking; and the justice or judge may be compelled by the district court, by an order entered upon motion, to transmit such papers and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the justice or judge by the party or his attorney.

History: En. Sec. 639, p. 170, Bannack Stat.; re-en. Sec. 744, p. 186, Cod. Stat. 1871; re-en. Sec. 804, 1st Div. Rev. Stat. 1879; re-en. Sec. 824, 1st Div. Comp. Stat. 1887; en. Sec. 1762, C. Civ. Proc. 1895; re-en. Sec. 7123, Rev. C. 1907; re-en. Sec. 9756, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 977; re-en. Sec. 9756, R.C.M. 1935; R.C.M. 1947, 93-7903; amd. Sec. 127, Ch. 575, L. 1981.

Part 2

Undertaking on Appeal — Stay of Execution

Part Cross-References

Undertakings for security, Title 25, ch. 1, part 4.

25-33-201. Undertaking on appeal. (1) An appeal from a justice's or city court is not effectual for any purpose unless an undertaking be filed, with two or more sureties, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money. The undertaking must be conditioned, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from and all costs if the appeal be withdrawn or dismissed or the amount of any judgment and all costs that may be recovered against him in the action in the district court.

(2) An appeal from a justice's or city court is not effectual for any purpose unless an undertaking be filed, with two or more sureties, in a sum equal to twice the value of the property, including costs, when the judgment is for the recovery of specific personal property. When the action is for the recovery of specific personal property, the undertaking must be conditioned that the appellant will pay the judgment and costs appealed from and obey the order of the court made therein if the appeal be withdrawn or dismissed or pay any judgment and costs that may be recovered against him in said action in the district court and obey any order made by the court therein.

(3) When the judgment appealed from directs the delivery of possession of real property, the execution of the same cannot be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that:

(a) during the possession of such property by the appellant, he will not commit or suffer to be committed any waste thereon; and

(b) if the appeal be dismissed or withdrawn or the judgment affirmed or judgment be recovered against him in the action in the district court, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof or he will pay any judgment and costs that may be recovered against him in said action in the district court, not exceeding a sum to be fixed by the justice or judge of the court from which the appeal is to be taken, which sum must be specified in the undertaking.

History: En. Sec. 638, p. 169, Bannack Stat.; re-en. Sec. 743, p. 185, Cod. Stat. 1871; re-en. Sec. 803, 1st Div. Rev. Stat. 1879; re-en. Sec. 823, 1st Div. Comp. Stat. 1887; amd. Sec. 1763, C. Civ. Proc. 1895; en. Sec. 1, Ch. 186, L. 1907; Sec. 7124, Rev. C. 1907; re-en. Sec. 9757, R.C.M.

1921; Cal. C. Civ. Proc. Sec. 978; re-en. Sec. 9757, R.C.M. 1935; R.C.M. 1947, 93-7904(part); amd. Sec. 128, Ch. 575, L. 1981.

25-33-202. Undertaking when prevailing party appeals. If the party in whose favor the judgment is rendered appeals, the undertaking must be in the sum of $100 and conditioned that he will pay all costs that may be awarded against him and obey any order of court made in the action.

History: En. Sec. 640, p. 170, Bannack Stat.; re-en. Sec. 745, p. 186, Cod. Stat. 1871; re-en. Sec. 805, 1st Div. Rev. Stat. 1879; re-en. Sec. 825, 1st Div. Comp. Stat. 1887; en. Sec. 1764, C. Civ. Proc. 1895; re-en. Sec. 7125, Rev. C. 1907; re-en. Sec. 9758, R.C.M. 1921; re-en. Sec. 9758, R.C.M. 1935; R.C.M. 1947, 93-7905(part).

25-33-203. Justification of sureties. The adverse party may except to the sufficiency of the sureties within 5 days after the filing of the undertaking, and unless they or other sureties justify before the justice or a judge of the district court of the county in which such action has been tried within 5 days thereafter, upon notice to the adverse party, to the amounts stated in their affidavits, the appeal must be regarded as if no such undertaking had been given. The sureties on the undertakings mentioned in this part must justify as provided in 33-26-102.

History: Ap. p. Sec. 638, p. 169, Bannack Stat.; re-en. Sec. 743, p. 185, Cod. Stat. 1871; re-en. Sec. 803, 1st Div. Rev. Stat. 1879; re-en. Sec. 823, 1st Div. Comp. Stat. 1887; amd. Sec. 1763, C. Civ. Proc. 1895; en. Sec. 1, Ch. 186, L. 1907; Sec. 7124, Rev. C. 1907; re-en. Sec. 9757, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 978; re-en. Sec. 9757, R.C.M. 1935; Sec. 93-7904, R.C.M. 1947; Ap. p. Sec. 640, p. 170, Bannack Stat.; re-en. Sec. 745, p. 186, Cod. Stat. 1871; re-en. Sec. 805, 1st Div. Rev. Stat. 1879; re-en. Sec. 825, 1st Div. Comp. Stat. 1887; en. Sec. 1764, C. Civ. Proc. 1895; re-en. Sec. 7125, Rev. C. 1907; re-en. Sec. 9758, R.C.M. 1921; re-en. Sec. 9758, R.C.M. 1935; Sec. 93-7905, R.C.M. 1947; R.C.M. 1947, 93-7904(part), 93-7905(part).

25-33-204. Stay of execution when undertaking filed. If an execution be issued, on the filing of the undertaking, the justice or judge must direct the officer to stay all proceedings on the same. Such officer must, upon the payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees on the execution be not paid, the officer may retain so much of the property or proceeds thereof as may be necessary to pay the same.

History: En. Sec. 642, p. 170, Bannack Stat.; re-en. Sec. 747, p. 186, Cod. Stat. 1871; re-en. Sec. 807, 1st Div. Rev. Stat. 1879; re-en. Sec. 827, 1st Div. Comp. Stat. 1887; amd. Sec. 1765, C. Civ. Proc. 1895; re-en. Sec. 7126, Rev. C. 1907; re-en. Sec. 9759, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 979; re-en. Sec. 9759, R.C.M. 1935; R.C.M. 1947, 93-7906.

25-33-205. Deposit of money in lieu of undertaking. Whenever an undertaking is required on appeal by the provisions of this chapter, a deposit in the court below of the amount of the judgment appealed from plus $300 or, if the judgment is for the recovery of specific personal property, the value of the property plus $300 or, if the party in whose favor the judgment is rendered appeals, $100 is equivalent to filing the undertaking. The justice or judge shall transmit the money to the clerk of the district court, who shall pay it out on the order of the court.

History: Ap.p. Sec. 638, p. 169, Bannack Stat.; re-en. Sec. 743, p. 185, Cod. Stat. 1871; re-en. Sec. 803, 1st Div. Rev. Stat. 1879; re-en. Sec. 823, 1st Div. Comp. Stat. 1887; amd. Sec. 1763, C. Civ. Proc. 1895; en. Sec. 1, Ch. 186, L. 1907; Sec. 7124, Rev. C. 1907; re-en. Sec. 9757, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 978; re-en. Sec. 9757, R.C.M. 1935; Sec. 93-7904, R.C.M. 1947;

Ap.p. Sec. 388, p. 112, Cod. Stat. 1871; re-en. Sec. 417, p. 153, L. 1877; re-en. Sec. 417, 1st Div. Rev. Stat. 1879; re-en. Sec. 430, 1st Div. Comp. Stat. 1887; amd. Sec. 1732, C. Civ. Proc. 1895; re-en. Sec. 7108, Rev. C. 1907; re-en. Sec. 9741, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 948; re-en. Sec. 9741, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; Sec. 93-8013, R.C.M. 1947; R.C.M. 1947, 93-7904(part), 93-8013(part); amd. Sec. 129, Ch. 575, L. 1981.

Cross-References
Deposit of money in lieu of undertaking, 25-1-401, 25-31-115.

25-33-206. Waiver of undertaking or deposit. In all cases where an undertaking is required on appeal by the provisions of this chapter, the undertaking or deposit may be waived by the written consent of the respondent.

History: En. Sec. 388, p. 112, Cod. Stat. 1871; re-en. Sec. 417, p. 153, L. 1877; re-en. Sec. 417, 1st Div. Rev. Stat. 1879; re-en. Sec. 430, 1st Div. Comp. Stat. 1887; amd. Sec. 1732, C. Civ. Proc. 1895; re-en. Sec. 7108, Rev. C. 1907; re-en. Sec. 9741, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 948; re-en. Sec. 9741, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; R.C.M. 1947, 93-8013(part).

25-33-207. Defective undertaking. No appeal shall be dismissed for insufficiency of the undertaking thereon or for any defect or irregularity therein if a good and sufficient undertaking be filed in the district court at or before the hearing of the motion to dismiss the appeal, which undertaking must be approved by the district judge.

History: En. Sec. 1767, C. Civ. Proc. 1895; re-en. Sec. 7128, Rev. C. 1907; re-en. Sec. 9761, R.C.M. 1921; re-en. Sec. 9761, R.C.M. 1935; R.C.M. 1947, 93-7908.

Part 3

Proceedings in District Court

25-33-301. Trial de novo — pleadings, conduct of trial. (1) All appeals from justices' or city courts must be tried anew in the district court on the papers filed in the justice's or city court unless the court, for good cause shown and on such terms as may be just, allow other or amended pleadings to be filed in such action. The court may order new or amended pleadings to be filed. Each party has the benefit of all legal objections made in the justice's or city court.

(2) When the action is tried anew on appeal, the trial must be conducted in all respects as other trials in the district court. The provisions of this code as to trials in the district courts are applicable to trials on appeal in the district court.

History: (1)En. Sec. 641, p. 170, Bannack Stat.; re-en. Sec. 746, p. 186, Cod. Stat. 1871; re-en. Sec. 806, 1st Div. Rev. Stat. 1879; re-en. Sec. 826, 1st Div. Comp. Stat. 1887; amd. Sec. 1761, C. Civ. Proc. 1895; re-en. Sec. 7122, Rev. C. 1907; re-en. Sec. 9755, R.C.M. 1921; re-en. Sec. 9755, R.C.M. 1935; Sec. 93-7902, R.C.M. 1947; (2)En. Sec. 1766, C. Civ. Proc. 1895; re-en. Sec. 7127, Rev. C. 1907; re-en. Sec. 9760, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 980; re-en. Sec. 9760, R.C.M. 1935; Sec. 93-7907, R.C.M. 1947; R.C.M. 1947, 93-7902(part), 93-7907(part).

Cross-References
Trials, Title 25, ch. 7.

25-33-302. Procedure upon reversal on issue of law. When a judgment is reversed or set aside on a question of law arising in the justice's or city court, the district court must either try the case anew or render a judgment.

History: **En. Sec. 641, p. 170, Bannack Stat.; re-en. Sec. 746, p. 186, Cod. Stat. 1871; re-en. Sec. 806, 1st Div. Rev. Stat. 1879; re-en. Sec. 826, 1st Div. Comp. Stat. 1887; amd. Sec. 1761, C. Civ. Proc. 1895; re-en. Sec. 7122, Rev. C. 1907; re-en. Sec. 9755, R.C.M. 1921; re-en. Sec. 9755, R.C.M. 1935; R.C.M. 1947, 93-7902(part).**

Cross-References

Judgment, Title 25, ch. 9.

Issues defined, types of issues, 25-31-801.

25-33-303. Appeal from judgment by default. There is no appeal from a judgment by default rendered in a justice's or city court except on questions of law which appear on the face of the papers or proceedings and except in cases when the justice's or city court has abused its discretion in setting aside or refusing to set aside a default or judgment. If the judgment by default is set aside, the district court must allow pleadings to be filed and try the case.

History: **En. Sec. 641, p. 170, Bannack Stat.; re-en. Sec. 746, p. 186, Cod. Stat. 1871; re-en. Sec. 806, 1st Div. Rev. Stat. 1879; re-en. Sec. 826, 1st Div. Comp. Stat. 1887; amd. Sec. 1761, C. Civ. Proc. 1895; re-en. Sec. 7122, Rev. C. 1907; re-en. Sec. 9755, R.C.M. 1921; re-en. Sec. 9755, R.C.M. 1935; R.C.M. 1947, 93-7902(part).**

Cross-References

Issues defined, types of issues, 25-31-801.

25-33-304. Dismissal of appeal upon delay — costs and damages. For a failure to prosecute an appeal or unnecessary delay in bringing it to a hearing, the district court may order the appeal to be dismissed, with costs; and if it appear to such court that the appeal was made solely for delay, it may add to the costs such damages as may be just, not exceeding 25% of the judgment appealed from.

History: **En. Sec. 1766, C. Civ. Proc. 1895; re-en. Sec. 7127, Rev. C. 1907; re-en. Sec. 9760, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 980; re-en. Sec. 9760, R.C.M. 1935; R.C.M. 1947, 93-7907(part).**

25-33-305. Costs when appeal unsuccessful. If the party appealing fails to reduce the judgment against him or to enlarge the judgment in his favor appealed from $10 or more or reverse the same in the district court, he shall not recover any costs of appeal.

History: **En. Sec. 640, p. 170, Bannack Stat.; re-en. Sec. 745, p. 186, Cod. Stat. 1871; re-en. Sec. 805, 1st Div. Rev. Stat. 1879; re-en. Sec. 825, 1st Div. Comp. Stat. 1887; en. Sec. 1764, C. Civ. Proc. 1895; re-en. Sec. 7125, Rev. C. 1907; re-en. Sec. 9758, R.C.M. 1921; re-en. Sec. 9758, R.C.M. 1935; R.C.M. 1947, 93-7905(part).**

25-33-306. Effect of judgment of district court. Judgments rendered in the district court on appeal shall have the same force and effect and may be enforced in the same manner as judgments in actions commenced in the district court.

History: **En. Sec. 1766, C. Civ. Proc. 1895; re-en. Sec. 7127, Rev. C. 1907; re-en. Sec. 9760, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 980; re-en. Sec. 9760, R.C.M. 1935; R.C.M. 1947, 93-7907(part).**

Cross-References

Execution of judgment, Title 25, ch. 13.

Proceedings in aid of execution, Title 25, ch. 14.

CHAPTER 34

SMALL CLAIMS PROCEDURE — DISTRICT COURT

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Chapter Cross-References
Small claims courts, Title 3, ch. 12.
Small claims procedure — Justice's Court, Title 25, ch. 35.

Part 1

General Provisions — Jurisdiction

25-34-101. Purpose — liberal construction. It is the purpose of this chapter to provide a speedy remedy in claims falling hereunder and to promote a forum in which such claims may be heard and disposed of without the necessity of formal trial. For this reason, the provisions hereof should be liberally construed to provide an informal but equitable means of justice, and the small claims court judges are required to assist all parties before them to obtain substantial justice.

History: En. 93-328 by Sec. 7, Ch. 519, L. 1975; R.C.M. 1947, 93-328.

Cross-References
Small claims courts — purpose — liberal construction, 3-12-101.
Small claims courts — assistance to claimants, 3-12-202.

25-34-102. Jurisdiction — joinder — interpleader. (1) The small claims court has original jurisdiction in all actions for the recovery of money or specific personal property when such action arises out of a contract, express or implied, the amount of the claim, exclusive of costs, does not exceed $1,500, and the defendant can be served within the county or counties for which the small claims court has been created.

(2) More than one claim may be joined if all claims joined would separately meet the requirements for jurisdiction in the small claims court and the total value of money claimed or property sought does not exceed $1,500.

(3) The small claims court has jurisdiction over an interpleader under 25-34-106 in which the amount claimed does not exceed $1,500.

History: En. 93-329 by Sec. 8, Ch. 519, L. 1975; R.C.M. 1947, 93-329(1); amd. Sec. 1, Ch. 530, L. 1987.

Compiler's Comments

1987 Amendment: Inserted (3).

Cross-References

Small claims court — jurisdiction — removal from District Court, 3-12-106.

25-34-103. Removal from district court. A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed $1,500. The small claims court shall hear any action so removed from the district court.

History: En. 93-329 by Sec. 8, Ch. 519, L. 1975; R.C.M. 1947, 93-329(2).

Cross-References

Small claims court — jurisdiction — removal from District Court, 3-12-106.

25-34-104. Venue. Proper venue for actions commenced in small claims court is the same as that provided by law for civil actions commenced in district court.

History: En. 93-331 by Sec. 10, Ch. 519, L. 1975; R.C.M. 1947, 93-331.

Cross-References

Small claims court — location — hours, 3-12-105.

Small claims court — venue, Title 25, ch. 2, 25-34-504.

25-34-105. Parties — representation. (1) Parties in the small claims court may be individuals, partnerships, corporations, unions, associations, or any other kind of organization or entity, except the state or any agency thereof.

(2) A party may not be represented by an attorney unless all parties are represented by an attorney in a small claims court, except as set forth in subsection (3) herein.

(3) An individual shall represent himself in the small claims court. A partnership shall be represented by a partner or one of its employees. A union shall be represented by a union member or union employee. A corporation shall be represented by one of its employees. An association shall be represented by one of its members or by an employee of the association. Any other kind of organization or entity shall be represented by one of its members or employees.

(4) Only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the small claims court.

(5) No party may file an assigned claim in the small claims court.

(6) Notwithstanding any other provision of this section, an executor or administrator of a decedent's estate, a guardian, or a conservator may be a party in the small claims court.

History: En. 93-330 by Sec. 9, Ch. 519, L. 1975; R.C.M. 1947, 93-330; amd. Sec. 8, Ch. 409, L. 1979.

Cross-References

When guardian necessary — how appointed, 25-31-602.

Defendant not in military service, 25-34-201.

Right to bring action or assert defense, Title 27, ch. 1, part 5.

Enforcement of minor's rights, 41-1-202.

25-34-106. Interpleader actions. (1) As used in this chapter, interpleader actions determine the rights of rival claimants to a fund held by a disinterested party and may be maintained in the small claims court when any person appears before a judge or clerk of court or justice of the peace and executes an affidavit setting forth the nature and basis of the claim.

(2) The person filing the interpleader affidavit shall deposit the funds with the clerk of court or justice of the peace at the same time the interpleader affidavit is filed.

(3) The interpleader must be substantially in the following form:

In the Small Claims Court of the .... Judicial District in and for the County of ...., State of Montana.

....,
Plaintiff
vs.
....,
Defendant
and
....
Defendant

INTERPLEADER AFFIDAVIT

State of Montana)
) ss
)

................, being duly sworn, deposes and says: That ...., a defendant, resides at ...., in the above named county. That ...., a defendant, resides at ...., in the above named county. That the plaintiff has custody or possession of money in the amount of $....., held pursuant to the following:

....
....
....
....

That the defendants claim or may claim to be entitled to the money. That the plaintiff deposits into the court $....., which represents the amount of money in dispute.

That the plaintiff resides at the address shown in the above caption.

....
Affiant

Subscribed and sworn to before me this .... day of ...., 19....

....
Justice of the Peace

....
Clerk

ORDER

The State of Montana to the within named defendants, greeting:

You are hereby directed to appear and answer the within and foregoing claim at my office in .... (name, building, or residence), in ...., County of ...., State of Montana, on the .... day of ...., 19...., at the hour of ......(AM)(PM); and to have with you then and there, all books, papers, and witnesses needed by you to establish your claim to such money.

You are further notified that in case you do not so appear, judgment will be given against you as follows:

Determining or foreclosing your claim to the above-described money, as well as the disposition thereof; and, in addition, for costs of the action.

Dated this .... day of ...., 19.....

....
Justice of the Peace

....
Clerk

History: **En. Sec. 3, Ch. 530, L. 1987.**

Part 2

Procedure Before Trial

25-34-201. Commencement of actions. (1) Actions in small claims court shall be commenced by filing an affidavit with the clerk of court. The small claims court judge shall assist any claimant in preparing an affidavit or may direct the clerk of court to provide such assistance.

(2) The clerk of court shall provide forms for the affidavits, which shall be in substantially the following form:

"In the Small Claims Court of the .... Judicial District in and for the County of ...., State of Montana.

....,	Doc. ...... No. ......
Plaintiff vs.	PLAINTIFF'S COMPLAINT/ AFFIDAVIT NOTICE TO DEFENDANT, SEEKING MONEY DAMAGES
....,	
Defendant	

Plaintiff states that defendant(s) owe and should be ordered to pay to me the sum of ...., because on .... (date) at .... (place), the defendant(s)
....
....

Plaintiff declares that the defendant or defendants are not a "person in military service" or "person in the military service of the United States" as defined in Sec. 101 of the Soldiers' and Sailors' Civil Relief Act of 1940.

To the best of my knowledge and belief, the defendant named above resides at the following address or the following is the business address:

....

....

My printed name and printed address are as follows:

....

Signed in my presence Signature:..

....

Clerk or Deputy Today's date:..

ORDER OF THE COURT/NOTICE TO DEFENDANT

This claim has been filed against you. You must appear before this court on .... (date) at .... (time) at .... (location).
If you do not appear, a judgment may be entered against you. Costs of the action also may be charged against you. You should read the information on the back of this claim and notice. If you have any questions about the procedure, you may contact the Clerk of the Court in person at .... (location of court) or by telephone at .... (number)

....

Clerk of the Court
By:.."

(3) When an interpleader appears, he shall prepare an interpleader affidavit under 25-34-106. Upon the interpleader affidavit being sworn to by the affiant, the judge, justice, or clerk of the court shall file it and make a true copy and at the same time shall sign the order directing the defendant to appear and answer the claim. A copy of the order must then be served upon the defendant in the manner provided by law for service of summons.

(4) Upon the matter being decided by the court, the court may order the court costs to be reimbursed from the interpleaded funds. The clerk of the court is charged with the responsibility of disbursing the interpleaded funds in accordance with the judge's order.

History: En. 93-326, 93-332 by Secs. 5, 11, Ch. 519, L. 1975; R.C.M. 1947, 93-326(part), 93-332; amd. Sec. 2, Ch. 530, L. 1987.

Compiler's Comments

1987 Amendment: In (2) required name and address of plaintiff to be printed on form; and inserted (3) and (4).

Cross-References

Assistance to claimants, 3-12-202.

25-34-202. Attachment not available. Attachment or prejudgment garnishment is not available in actions brought in small claims court.

History: En. 93-338 by Sec. 17, Ch. 519, L. 1975; R.C.M. 1947, 93-338(part).

25-34-203. Order of court directing defendant to pay or answer claim. (1) Upon the filing of the affidavit and payment of the fee hereinafter provided, the clerk of court shall cause to be delivered to the sheriff of the county of the defendant's residence a copy of the affidavit together with the original and a copy of an order issued by the court, directed to the defendant, and directing the defendant to pay the claim set forth in the affidavit or deliver up the property described or, in the alternative, to appear and answer the claim set forth in the affidavit.

(2) The order shall:

(a) specify the time, date, and place set for hearing the claim;

(b) state that if the defendant fails to appear at the hearing and has not satisfied the claim, judgment will be entered against him in the amount or for the relief claimed plus costs; and

(c) be signed by the clerk of court and bear the seal of the court.

History: En. 93-333 by Sec. 12, Ch. 519, L. 1975; R.C.M. 1947, 93-333; amd. Sec. 130, Ch. 575, L. 1981.

25-34-204. Hearing date. The date for the appearance of the defendant to be set forth in the order shall be determined by the clerk of court in accordance with rules adopted by the small claims judge and shall not be more than 30 or less than 10 days from the date of the order. Service of the order and copy of the affidavit shall be made upon the defendant not less than 7 days prior to the date set for his appearance by the order. If the order is not timely served, plaintiff may have a new appearance date set by the clerk and a new order issued and delivered to the sheriff, and, if necessary, repeated orders may be issued at any time within 1 year after the commencement of the action.

History: En. 93-335 by Sec. 14, Ch. 519, L. 1975; R.C.M. 1947, 93-335.

Cross-References

Clerk of District Court as clerk of small claims court, 3-12-103.

25-34-205. Service on defendant. The original order shall be shown to the defendant and a copy of it along with a copy of the affidavit shall be served upon the defendant by the sheriff in the same manner provided by law for service of process in civil actions in district court. The provisions of law relating to sheriff's fees are applicable to this section.

History: En. 93-334 by Sec. 13, Ch. 519, L. 1975; R.C.M. 1947, 93-334.

Cross-References

Fees of the Sheriff, 7-32-2141.

Mileage and expenses of Sheriff in general, 7-32-2143.

Service of process and other papers, Title 25, ch. 3.

Collection of clerk's and Sheriff's costs after judgment, 25-10-406.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

25-34-206. Return of service. The sheriff, after effecting service, shall make return upon the original order and file it with the clerk of court.

History: En. 93-336 by Sec. 15, Ch. 519, L. 1975; R.C.M. 1947, 93-336.

25-34-207. Defendant's counterclaim. (1) If the defendant wishes to assert a counterclaim against the plaintiff, he shall file a written answer setting forth his counterclaim against the plaintiff and shall cause the answer to be served upon the plaintiff not less than 72 hours before the date set for the hearing. Service shall be made in the same manner in which service is made upon the defendant.

(2) A counterclaim or setoff may not exceed $1,500. If a counterclaim or setoff is asserted in excess of $1,500, the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but the court shall limit its determination of the counterclaim or setoff to the question of whether plaintiff's

claim is discharged thereby, leaving defendant to prosecute the balance of his claim in appropriate district court action.

History: En. 93-337 by Sec. 16, Ch. 519, L. 1975; R.C.M. 1947, 93-337.

25-34-208. Clerk's fees. (1) The clerk of court shall collect a fee of $5:

(a) from the plaintiff upon the filing of the affidavit;

(b) from the defendant upon the filing of a written answer.

(2) The laws relating to paupers' affidavits apply to actions before the small claims courts.

History: En. 93-344 by Sec. 23, Ch. 519, L. 1975; R.C.M. 1947, 93-344(1), (2).

Cross-References

Poor persons not required to prepay fees, 25-10-404.

Part 3

The Trial

25-34-301. Jury — waiver — request. The plaintiff, by filing the affidavit for a proceeding in small claims court, waives the right to jury trial. Defendant may request a jury, provided such request is made not less than 48 hours prior to the date set for hearing. If defendant pleads a counterclaim or setoff, he too waives a jury trial. If a jury is requested, it shall be impaneled in the same fashion as provided for district court juries in civil cases involving less than $10,000.

History: En. 93-340 by Sec. 19, Ch. 519, L. 1975; R.C.M. 1947, 93-340.

Cross-References

Right to trial by jury, Art. II, sec. 26, Mont. Const.

Trial juries — District Court, Title 3, ch. 15, part 5.

Selection of jury, Title 25, ch. 7, part 2.

Jurors, Rule 47, M.R.Civ.P. (see Title 25, ch. 20).

25-34-302. Proceedings informal — court reporters. (1) If the action is tried to the court, the proceedings shall be informal to the extent possible in order to dispense speedy justice to the parties. A reporter is not necessary unless the judge finds the issues sufficiently complex that a record is desirable, in which case he shall make arrangements with a court reporter of the district court to take the testimony. The judge shall make findings of fact sufficient to establish in full the basis of his judgment and shall file them with his judgment.

(2) If a jury is impaneled, it shall try all issues of fact, and in such case there shall be a court reporter.

History: En. 93-339 by Sec. 18, Ch. 519, L. 1975; R.C.M. 1947, 93-339.

Cross-References

Court reporters, Title 3, ch. 5, part 6.

Small claims courts — purpose — liberal construction, 3-12-101, 25-34-101.

25-34-303. Evidence — subpoena power. Both parties have the right to offer evidence, written and oral, and the judge may direct the production of evidence as he deems appropriate. The small claims court has the subpoena power granted to district courts in civil cases.

History: En. 93-341 by Sec. 20, Ch. 519, L. 1975; R.C.M. 1947, 93-341.

Cross-References

Powers of judicial officers as to conduct of proceedings, 3-1-402.

Subpoena, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas and witnesses, Title 26, ch. 2.

Part 4

Judgment — Appeal

25-34-401. Entry of judgment. Upon the conclusion of a case tried to the court, the judge shall make his findings and enter judgment. Judgment shall be entered upon a jury verdict in the same manner as is provided for district court jury trials.

History: **En. 93-342 by Sec. 21, Ch. 519, L. 1975; R.C.M. 1947, 93-342.**

Cross-References

Judgment, Title 25, ch. 9.

Judgment — costs, Rule 54, M.R.Civ.P. (see Title 25, ch. 20).

25-34-402. Costs. The prevailing party in an action before the small claims court is entitled to costs.

History: **En. 93-344 by Sec. 23, Ch. 519, L. 1975; R.C.M. 1947, 93-344(3).**

Cross-References

Costs, Title 25, ch. 31, part 10.

25-34-403. Appeals. (1) If either party is dissatisfied with the judgment of the small claims court, he may appeal to the district court of the county in which the judgment was rendered, in accordance with the procedure prescribed in chapter 33. Any such appeal must be tried de novo.

(2) In the event that the parties are represented by counsel on appeal, the judge may grant the prevailing party, in addition to costs, reasonable attorney fees.

History: **En. 93-343 by Sec. 22, Ch. 519, L. 1975; R.C.M. 1947, 93-343; amd. Sec. 131, Ch. 575, L. 1981.**

Cross-References

Kinds of jurisdiction, 3-5-301.

Appellate jurisdiction, 3-5-303.

25-34-404. Execution of judgment. Proceedings to enforce or collect a judgment are governed by the laws relating to executions upon district court judgments.

History: **En. 93-338 by Sec. 17, Ch. 519, L. 1975; R.C.M. 1947, 93-338(part).**

Cross-References

Execution of judgment, Title 25, ch. 13.

Proceedings in aid of execution, Title 25, ch. 14.

CHAPTER 35

SMALL CLAIMS PROCEDURE — JUSTICE'S COURT

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(Repealed. Sec. 29, Ch. 586, L. 1981)

Part 2 — Procedure Before Trial
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Chapter Cross-References

Small claims division, Title 3, ch. 10, part 10.

Part 1

General Provisions — Jurisdiction (Repealed. Sec. 29, Ch. 586, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

25-35-101. En. 93-345 by Sec. 1, Ch. 572, L. 1977; R.C.M. 1947, 93-345.

25-35-102. En. 93-347 by Sec. 3, Ch. 572, L. 1977; R.C.M. 1947, 93-347(1).

25-35-103. En. 93-347 by Sec. 3, Ch. 572, L. 1977; R.C.M. 1947, 93-347(2).

25-35-104. En. 93-348 by Sec. 4, Ch. 572, L. 1977; R.C.M. 1947, 93-348.

25-35-105. En. 93-354 by Sec. 10, Ch. 572, L. 1977; R.C.M. 1947, 93-354; amd. Sec. 9, Ch. 409, L. 1979.

Part 2

Procedure Before Trial (Repealed. Sec. 29, Ch. 586, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

25-35-201. En. 93-349, 93-361 by Secs. 5, 17, Ch. 572, L. 1977; R.C.M. 1947, 93-349(part), 93-361(1); amd. Sec. 1, Ch. 501, L. 1979.

25-35-202. En. 93-350 by Sec. 6, Ch. 572, L. 1977; R.C.M. 1947, 93-350.

25-35-203. En. 93-352 by Sec. 8, Ch. 572, L. 1977; R.C.M. 1947, 93-352; amd. Sec. 2, Ch. 501, L. 1979.

25-35-204. En. 93-351 by Sec. 7, Ch. 572, L. 1977; R.C.M. 1947, 93-351.
25-35-205. En. 93-353 by Sec. 9, Ch. 572, L. 1977; R.C.M. 1947, 93-353.
25-35-206. Renumbered 25-35-212 by Code Commissioner, 1979.
25-35-207. Renumbered 25-35-213 by Code Commissioner, 1979.
25-35-211. En. Sec. 3, Ch. 501, L. 1979.
25-35-212. En. 93-349 by Sec. 5, Ch. 572, L. 1977; R.C.M. 1947, 93-349(part); amd. Sec. 4, Ch. 501, L. 1979; Sec. 25-35-206, MCA 1979; redes. 25-35-212 by Code Commissioner, 1979.
25-35-213. En. 93-364 by Sec. 20, Ch. 572, L. 1977; R.C.M. 1947, 93-364(1), (2); amd. Sec. 5, Ch. 501, L. 1979; Sec. 25-35-207, MCA 1979; redes. 25-35-213 by Code Commissioner, 1979.

Part 3

The Trial (Repealed. Sec. 29, Ch. 586, L. 1981)

Part Compiler's Comments
Histories of Repealed Sections:
25-35-301. En. 93-349 by Sec. 5, Ch. 572, L. 1977; R.C.M. 1947, 93-349(part).
25-35-302. En. 93-355 by Sec. 11, Ch. 572, L. 1977; R.C.M. 1947, 93-355.
25-35-303. En. 93-356 by Sec. 12, Ch. 572, L. 1977; R.C.M. 1947, 93-356.

Part 4

Judgment — Appeal (Repealed. Sec. 29, Ch. 586, L. 1981)

Part Compiler's Comments
Histories of Repealed Sections:
25-35-401. En. 93-362 by Sec. 18, Ch. 572, L. 1977; R.C.M. 1947, 93-362.
25-35-402. En. 93-364 by Sec. 20, Ch. 572, L. 1977; R.C.M. 1947, 93-364(3).
25-35-403. En. 93-357 by Sec. 13, Ch. 572, L. 1977; R.C.M. 1947, 93-357(part).
25-35-404. En. 93-357, 93-358 by Secs. 13, 14, Ch. 572, L. 1977; R.C.M. 1947, 93-357(part), 93-358.
25-35-405. En. 93-359 by Sec. 15, Ch. 572, L. 1977; R.C.M. 1947, 93-359.
25-35-406. En. 93-363 by Sec. 19, Ch. 572, L. 1977; R.C.M. 1947, 93-363.

Part 5

General Provisions

25-35-501. Purpose. It is the purpose of this chapter to provide a speedy remedy for small claims and to promote a forum in which such claims may be heard and disposed of without the necessity of a formal trial.

History: **En. Sec. 1, Ch. 586, L. 1981.**

Cross-References
Small claims division — purpose, 3-10-1001.

25-35-502. Jurisdiction. The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed $1,500, exclusive of costs, and the defendant can be served within the county where the action is commenced.

History: **En. Sec. 2, Ch. 586, L. 1981.**

Cross-References
Small claims division — jurisdiction — removal from District Court, 3-10-1004.

25-35-503. Removal from district court. A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed $1,500. The small claims court shall hear any action so removed from the district court.

History: En. Sec. 3, Ch. 586, L. 1981.

Cross-References

Small claims division — jurisdiction — removal from District Court, 3-10-1004.

25-35-504. Venue. Proper venue for actions commenced in the small claims court is the same as that provided by law for civil actions commenced in justice's court.

History: En. Sec. 4, Ch. 586, L. 1981.

Cross-References

Small claims division — location — hours, 3-10-1003.

25-35-505. Parties — representation. (1) Parties in the small claims court may be individuals, partnerships, corporations, unions, associations, or any other kind of organization or entity, except the state or any agency thereof.

(2) A party may not be represented by an attorney unless all parties are represented by an attorney in a small claims court.

(3) An individual may represent himself in a small claims court. A partnership may be represented by a partner or one of its employees. A union may be represented by a union member or union employee. A corporation may be represented by one of its employees. An association may be represented by one of its members or by an employee of the association. Any other kind of organization or entity may be represented by one of its members or employees.

(4) Only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the small claims court.

(5) No party may file an assigned claim in the small claims court.

(6) No party may file more than 10 claims in any calendar year.

(7) Notwithstanding any other provision of this section, a personal representative of a decedent's estate, a guardian, or a conservator may be a party in the small claims court.

History: En. Sec. 5, Ch. 586, L. 1981; amd. Sec. 1, Ch. 213, L. 1985.

Cross-References

When guardian necessary — how appointed, 25-31-602.

Right to bring action or assert defense, Title 27, ch. 1, part 5.

Enforcement of minor's rights, 41-1-202.

Part 6

Procedure Before Trial

25-35-601. Commencement of action — assistance to claimant. (1) A small claims action is commenced whenever any person appears before a justice of the peace or his clerk and executes a sworn small claims complaint in substantially the same form as set forth in 25-35-602.

(2) The justice shall assist any claimant in preparing his complaint or instruct his clerk to provide such assistance. The attorney general shall prepare a pamphlet explaining in plain language the procedures for prosecuting

and defending a claim in small claims court and distribute copies of the pamphlet to each small claims court. The justice or his clerk shall give the plaintiff a copy when the plaintiff appears to execute his complaint, and a copy must be attached to the order of the court/notice to defendant.

History: En. Sec. 6, Ch. 586, L. 1981; amd. Sec. 3, Ch. 492, L. 1983.

25-35-602. Form of complaint and order of court/notice to defendant. The sworn complaint and order of the court shall be made on a blank substantially in the following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
COURT OF .... COUNTY, MONTANA
BEFORE ...., JUSTICE OF THE PEACE

....

....
Plaintiff
vs.
....
....
Defendant(s)

Complaint
Case No. .....

....

Comes now the plaintiff, being first duly sworn, upon oath, and complains and alleges that defendant is indebted to plaintiff in the sum of $......, for ....
....
....
which sum is now due, owing, and unpaid despite demands for the payment thereof, together with plaintiff's costs herein expended.

Dated this ...... day of ...., 19....

....
Plaintiff
....
Plaintiff's address

Subscribed and sworn to before me this ...... day of ...., 19....

....
Justice of the peace
By:...
Clerk, small claims division

ORDER OF COURT/
NOTICE TO DEFENDANT

THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby directed to appear and answer the within and foregoing complaint at:

....
....
on ....at ....
Reset for ....at ....
Reset for ....at ....
Reset for ....at ....

and to have with you, then and there, all books, papers, and witnesses needed by you to establish your defense to the claim; and you are further notified that in case you do not appear, judgment will be taken against you by default for the relief demanded in the complaint and for costs of this action, including costs of service of the complaint and order of the court/notice to defendant.

You are hereby further notified that, within 10 days of service upon you of this complaint and order, you may remove this action from the small claims court to justice's court, and that your failure to remove shall constitute a waiver of your rights to trial by jury and to representation by counsel.

To the Sheriff, Constable, or Server of Process of said county, greetings:
Make legal service and due return thereof on the defendant at ....
Dated this .... day of ...., 19....

....
Justice of the peace
By:...
Clerk, small claims division

History: **En. Sec. 7, Ch. 586, L. 1981; amd. Sec. 13, Ch. 3, L. 1985.**

Cross-References
Removal to Justice's Court, 25-35-605.

25-35-603. Hearing date. The date for the appearance of the defendant to be set forth in the order shall be determined by the justice of the peace or by his clerk and may not be more than 40 or less than 10 days from the date of the order. Service of the order and a copy of the sworn complaint shall be made upon the defendant not less than 5 days prior to the date set for his appearance by the order. If the order is not timely served, the plaintiff may have a new appearance date set by the justice of the peace or his clerk and a new order issued and delivered to the sheriff, constable, or other process server. If necessary, repeated orders may be issued at any time within 1 year after the commencement of the action.

History: **En. Sec. 8, Ch. 586, L. 1981.**

25-35-604. Service on defendant — return. (1) The original of the order and notice shall be shown to the defendant, and a copy of it along with a copy of the sworn complaint shall be served upon the defendant by the sheriff, constable, or other process server in the same manner provided by law for service of process in civil actions in justice's court. The provisions of law relating to sheriff's fees are applicable to this section.

(2) The sheriff, constable, or other process server shall, after effecting service, return the original order to the justice of the peace or his clerk.

History: **En. Secs. 9, 10, Ch. 586, L. 1981.**

Cross-References
Fees of the Sheriff, 7-32-2141.
Mileage and expenses of Sheriff in general, 7-32-2143.
Who may serve summons — method of service, 25-31-408.

25-35-605. Removal to justice's court — effect of failure to remove. (1) Any action commenced in small claims court may be removed to justice's court by a defendant upon the filing of a notice of removal with the justice within 10 days of the service of the complaint and order. From the time of filing of the notice of removal, the court to which the action is removed has and exercises the same jurisdiction over it as though the action had been originally commenced in such court.

(2) Upon the filing of a notice of removal, the court shall give notice of that fact to all other parties to the action. All rules and statutes governing proceedings originally commenced in justice's court, except rules of pleading but including rules and statutes governing appeals from justice's court, are applicable to proceedings removed to justice's court, except that a plaintiff is not required to replead unless the court so orders, and no fee shall be required of a plaintiff for the filing of a complaint if a fee for filing was paid in small claims court.

(3) Failure to request removal within the time provided in subsection (1) constitutes a waiver by the defendant of his right to a trial by jury and representation by an attorney, and the justice shall inform the defendant of such fact prior to commencement of the hearing.

History: En. Secs. 17, 18, Ch. 586, L. 1981; amd. Sec. 4, Ch. 492, L. 1983.

25-35-606. Defendant's counterclaim. (1) The defendant may assert a counterclaim against the plaintiff arising out of the same transaction or occurrence that is the subject matter of the plaintiff's claim by appearing before the justice of the peace and executing a sworn small claims counterclaim in substantially the same form as set forth in subsection (3). The defendant shall cause the counterclaim to be served on the plaintiff not less than 72 hours before the date set for the hearing. Service shall be made in the same manner in which service of the order of court/notice to defendant is made on the defendant. A defendant may not assert as a counterclaim any claim not arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim.

(2) A counterclaim or setoff may not exceed $1,500. If a counterclaim or setoff is asserted in excess of $1,500, the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but the court shall limit its determination of the counterclaim or setoff to the question of whether the plaintiff's claim is discharged thereby, leaving the defendant to prosecute the balance of his claim in an appropriate justice or district court action.

(3) The counterclaim shall be made on a blank substantially in the following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S COURT OF
.... COUNTY, MONTANA
BEFORE ...., JUSTICE OF THE PEACE

....

....
Plaintiff
vs.
....
....
Defendant(s)

Counterclaim
Case No. ...

....

Comes now the defendant, being first duly sworn, upon oath, and alleges that defendant is entitled to counterclaim against the plaintiff in the plaintiff's pending action in the sum of $....., for ....

....

....
which sum is now due, together with defendant's costs herein expended.

Dated this ...... day of ...., 19....

....
Defendant

....
Defendant's address

Subscribed and sworn to before me this ..... day of ...., 19....

....
Justice of the peace
By:...
Clerk, small claims division

History: **En. Sec. 11, Ch. 586, L. 1981.**

25-35-607. No further pleadings. No form of pleading other than the complaint, the order of the court/notice to defendant, and the counterclaim of the defendant, if there is one, is allowed.

History: **En. Sec. 12, Ch. 586, L. 1981.**

25-35-608. Fees. (1) The clerk of the justice's court shall collect a fee of $5:

(a) from the plaintiff upon the filing of the sworn complaint; and

(b) from the defendant upon his appearance and contesting of the complaint or execution of a counterclaim.

(2) The laws relating to paupers' affidavits apply to actions before the small claims court.

History: **En. Sec. 13, Ch. 586, L. 1981.**

Cross-References

Poor persons not required to prepay fees, 25-10-404.

Part 7

The Trial

25-35-701. Proceedings to be informal. The hearing and disposition of small claims actions shall be informal.

History: **En. Sec. 14, Ch. 586, L. 1981.**

Cross-References

Small claims division — purpose, 3-10-1001, 25-35-501.

25-35-702. Witnesses — evidence — subpoena power. The plaintiff and the defendant may offer evidence in their behalf by witnesses appearing at such hearing in the same manner as in other cases arising in justice's court or by written evidence, and the judge may direct the production of evidence as he considers appropriate. The small claims court has the subpoena power granted to justices' courts in all civil cases.

History: **En. Sec. 15, Ch. 586, L. 1981.**

Cross-References
Powers of judicial officers as to conduct of proceedings, 3-1-402.
Subpoena, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).
Evidence — subpoena power, 25-34-303.
Subpoenas and witnesses, Title 26, ch. 2.

25-35-703. Record of proceedings. All civil actions tried in a small claims court shall be recorded either electronically or stenographically.
History: En. Sec. 16, Ch. 586, L. 1981.

Part 8

Judgment — Appeal

25-35-801. Entry of judgment. Upon the conclusion of the case tried to the court, the justice shall make his findings and enter judgment.
History: En. Sec. 19, Ch. 586, L. 1981.

Cross-References
Docket entries, 3-10-1005.

25-35-802. Costs. The prevailing party in an action before the small claims court is entitled to his costs.
History: En. Sec. 20, Ch. 586, L. 1981.

Cross-References
Costs, Title 25, ch. 31, part 10.

25-35-803. Appeal to district court — commencement and scope. (1) If either party is dissatisfied with the judgment of the small claims court, he may appeal to the district court of the county where the judgment was rendered. An appeal shall be commenced by giving written notice to the small claims court and serving a copy of the notice of appeal on the adverse party within 10 days after entry of judgment.

(2) There may not be a trial de novo in the district court. The appeal shall be limited to questions of law.
History: En. Sec. 21, Ch. 586, L. 1981.

Cross-References
Kinds of jurisdiction, 3-5-301.
Appellate jurisdiction, 3-5-303.
Appeals to District Court from Justices' and City Courts, Title 25, ch. 33.

25-35-804. Record on appeal. (1) Within 30 days of the notice, the entire record of the small claims court proceedings shall be transmitted to the district court or the appeal shall be dismissed. It is the duty of the appealing party to perfect the appeal.

(2) When notice of appeal is filed, the justice shall forward the electronic recording or transcript of the stenographic record of the proceedings to the district court, together with the original papers filed, certified by him to be accurate and complete. When the record is transferred to the clerk of the district court, the justice shall notify the parties in writing.
History: En. Sec. 22, Ch. 586, L. 1981.

Cross-References
Papers to be transmitted, 25-33-104.

25-35-805. Use of transcripts or tapes by district court. The district court may hear the recording of the proceedings of the justice's court, but in its discretion it may have parts or all of the recordings transcribed at the cost of the district court. If the proceedings are stenographically taken, the notes will be transcribed in full or in designated parts as stipulated by the parties. The cost of such transcription shall be computed as prescribed by law.

History: En. Sec. 23, Ch. 586, L. 1981.

25-35-806. Attorney's fees upon appeal or removal. (1) If the parties are represented by counsel on appeal, the court may grant the prevailing party his reasonable attorney's fees, in addition to costs.

(2) If a defendant removes a matter to justice's court under the provisions of 25-35-605(1) but does not prevail in justice's court, the court may grant the plaintiff his reasonable attorney's fees, if any.

History: En. Sec. 25, Ch. 586, L. 1981.

25-35-807. Execution of judgment. Proceedings to enforce or collect a judgment are governed by the laws relating to execution upon justice's court judgments.

History: En. Sec. 24, Ch. 586, L. 1981.

Cross-References

Execution of judgment in Justice's Court generally, Title 25, ch. 31, part 11.

TITLE 26

EVIDENCE

Ch.
1. Statutory Provisions on Evidence.
2. Subpoenas and Witnesses.
3. Effect of Former Judgments and Orders.
Chapters 4 through 9 reserved.
10. Montana Rules of Evidence.

CHAPTER 1

STATUTORY PROVISIONS ON EVIDENCE

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Part 1

Definitions and Miscellaneous Provisions

26-1-101. General definitions. (1) "Direct examination" is the first examination of a witness on a particular matter. "Cross-examination" is the examination of a witness by a party other than the direct examiner.

(2) "Evidence" is the means of ascertaining in a judicial proceeding the truth respecting a question of fact, including but not limited to witness testimony, writings, physical objects, or other things presented to the senses.

(3) A "leading question" is a question which suggests to the witness the answer which the examining party desires.

(4) "Proof" is the establishment of a fact by evidence.

(5) A "witness" is a person whose declaration under oath is received as evidence for any purpose, whether such declaration be made on oral examination or by deposition or affidavit.

History: (1)En. Sec. 3373, C. Civ. Proc. 1895; re-en. Sec. 8018, Rev. C. 1907; re-en. Sec. 10662, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2045; re-en. Sec. 10662, R.C.M. 1935; Sec. 93-1901-4, R.C.M. 1947; (2)En. Sec. 3100, C. Civ. Proc. 1895; re-en. Sec. 7844, Rev. C. 1907; re-en. Sec. 10488, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1823; re-en. Sec. 10488, R.C.M. 1935; Sec. 93-301-1, R.C.M. 1947; (3)En. Sec. 3374, C. Civ. Proc. 1895; re-en. Sec. 8019, Rev. C. 1907; re-en. Sec. 10663, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2046; re-en. Sec. 10663, R.C.M. 1935; Sec. 93-1901-5, R.C.M. 1947; (4)En. Sec. 3101, C. Civ. Proc. 1895; re-en. Sec. 7845, Rev. C. 1907; re-en. Sec. 10489, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1824; re-en. Sec. 10489, R.C.M. 1935; Sec. 93-301-2, R.C.M. 1947; (5)En. Sec. 3160, C. Civ. Proc. 1895; re-en. Sec. 7889, Rev. C. 1907; re-en. Sec. 10533, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1878; re-en. Sec. 10533, R.C.M. 1935; Sec. 93-701-1, R.C.M. 1947; R.C.M. 1947, 93-301-1, 93-301-2, 93-701-1, 93-1901-4, 93-1901-5; amd. Sec. 1, Ch. 72, L. 1983.

Cross-References

Oaths — form, 1-6-102.

Order of trial, 25-7-301.

Depositions, Rule 26, M.R.Civ.P. (see Title 25, ch. 20).

Scope of examination and cross-examination, Rule 43(b), M.R.Civ.P. (see Title 25, ch. 20); Rule 611, M.R.Ev. (see Title 26, ch. 10).

Affidavits, Title 26, ch. 1, part 10.

Mode of interrogation, Rule 611, M.R.Ev. (see Title 26, ch. 10).

Witness defined — criminal proceedings, 45-2-101.

26-1-102. Definitions — kinds of evidence. (1) (a) "Conclusive evidence" is that which the law does not permit to be contradicted.

(b) No evidence is by law made conclusive unless so declared by statute.

(2) "Cumulative evidence" is additional evidence of the same character to the same point.

(3) "Corroborative evidence" is additional evidence of a different character to the same point.

(4) "Direct evidence" is that which proves a fact without an inference or presumption and which in itself, if true, establishes that fact.

(5) "Circumstantial evidence" is that which tends to establish a fact by proving another and which, though true, does not of itself conclusively establish that fact but affords an inference or presumption of its existence.

(6) "Prima facie evidence" is that which proves a particular fact until contradicted and overcome by other evidence.

History: (1)(a)En. Sec. 3114, C. Civ. Proc. 1895; re-en. Sec. 7858, Rev. C. 1907; re-en. Sec. 10502, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1837; re-en. Sec. 10502, R.C.M. 1935; Sec. 93-301-15, R.C.M. 1947; (1)(b)En. Sec. 3280, C. Civ. Proc. 1895; re-en. Sec. 7971, Rev. C. 1907; re-en. Sec. 10615, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1978; re-en. Sec. 10615, R.C.M. 1935; Sec. 93-1401-9, R.C.M. 1947; (2)En. Sec. 3115, C. Civ. Proc. 1895; re-en. Sec. 7859, Rev. C. 1907; re-en. Sec. 10503, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1838; re-en. Sec. 10503, R.C.M. 1935; Sec. 93-301-16, R.C.M. 1947; (3)En. Sec. 3108, C. Civ. Proc. 1895; re-en. Sec. 7852, Rev. C. 1907; re-en. Sec. 10496, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1831; re-en. Sec. 10496, R.C.M. 1935; Sec. 93-301-9, R.C.M. 1947; (4)(a)En. Sec. 3109, C. Civ. Proc. 1895; re-en. Sec. 7853, Rev. C. 1907; re-en. Sec. 10497, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1832; re-en. Sec. 10497, R.C.M. 1935; Sec. 93-301-10, R.C.M. 1947; (4)(b)En. Sec. 3260, C. Civ. Proc. 1895; re-en. Sec. 7956, Rev. C. 1907; re-en. Sec. 10600, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1957; re-en. Sec. 10600, R.C.M. 1935; Sec. 93-1301-1, R.C.M. 1947; (5)En. Sec. 3110, C. Civ. Proc. 1895; re-en. Sec. 7854, Rev. C. 1907; re-en. Sec. 10498, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1833; re-en. Sec. 10498, R.C.M.

1935; Sec. 93-301-11, R.C.M. 1947; R.C.M. 1947, 93-301-9, 93-301-10, 93-301-11, 93-301-15, 93-301-16, 93-1301-1, 93-1401-9; amd. Sec. 2, Ch. 72, L. 1983.

Cross-References

Inference defined, 26-1-501.

Presumptions, Title 26, ch. 1, part 6.

Effect of former judgments and orders, Title 26, ch. 3.

Exclusion of relevant evidence on grounds of waste of time, Rule 403, M.R.Ev. (see Title 26, ch. 10).

Prima facie evidence — self-authenticating documents, Rule 902, M.R.Ev. (see Title 26, ch. 10); Table "E" (see compiler's comment, Rule 902, M.R.Ev., see Title 26, ch. 10).

Prima facie evidence by third-party documents, 30-1-202.

26-1-103. Declaration, act, or omission which is a part of the transaction. Where the declaration, act, or omission forms part of a transaction which is itself the fact in dispute or evidence of that fact, such declaration, act, or omission is evidence as part of the transaction.

History: En. Sec. 604, p. 196, L. 1877; re-en. Sec. 604, 1st Div. Rev. Stat. 1879; re-en. Sec. 622, 1st Div. Comp. Stat. 1887; re-en. Sec. 3126, C. Civ. Proc. 1895; re-en. Sec. 7867, Rev. C. 1907; re-en. Sec. 10511, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1850; re-en. Sec. 10511, R.C.M. 1935; R.C.M. 1947, 93-401-7.

Cross-References

Definition of hearsay evidence, Rule 801, M.R.Ev. (see Title 26, ch. 10).

Res gestae, Rules 801 and 803, M.R.Ev. (see Title 26, ch. 10).

Hearsay exceptions — similar to transaction rule, Rule 803(1) through (3), M.R.Ev. (see Title 26, ch. 10).

Course of dealing and usage of trade, 30-1-205.

26-1-104. Evidence of third person's obligation. Where the question in dispute between the parties is the obligation or duty of a third person, whatever would be the evidence for or against such person is prima facie evidence between the parties.

History: En. Sec. 605, p. 197, L. 1877; re-en. Sec. 605, 1st Div. Rev. Stat. 1879; re-en. Sec. 623, 1st Div. Comp. Stat. 1887; re-en. Sec. 3127, C. Civ. Proc. 1895; re-en. Sec. 7868, Rev. C. 1907; re-en. Sec. 10512, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1851; re-en. Sec. 10512, R.C.M. 1935; R.C.M. 1947, 93-401-8.

Cross-References

Obligations in general, Title 28, ch. 1.

Course of dealing and usage of trade, 30-1-205.

26-1-105. Superseded. Sup. Ct. Ord. No. 12729, July 10, 1979. (See compiler's comments in annotations under Title 26, ch. 10, Mont. Rules of Evidence.)

History: En. Sec. 624, p. 201, L. 1877; re-en. Sec. 624, 1st Div. Rev. Stat. 1879; re-en. Sec. 642, 1st Div. Comp. Stat. 1887; re-en. Sec. 3146, C. Civ. Proc. 1895; re-en. Sec. 7887, Rev. C. 1907; re-en. Sec. 10531, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1870; re-en. Sec. 10531, R.C.M. 1935; R.C.M. 1947, 93-401-27(part)(10).

26-1-106. Explanation of alterations in a writing. The party producing a writing as genuine which has been altered or appears to have been altered after its execution in a part material to the question in dispute must account for the appearance or alteration. He may show that the alteration was made by another without his concurrence, was made with the consent of the parties affected by it, or was otherwise properly or innocently made or that the alteration did not change the meaning or language of the instrument. If he does that, he may give the writing in evidence, but not otherwise.

History: En. Sec. 365, p. 119, Bannack Stat.; re-en. Sec. 423, p. 221, L. 1867; re-en. Sec. 497, p. 136, Cod. Stat. 1871; rep. Sec. 674, p. 215, L. 1877; re-en. Sec. 12, p. 12, L. 1881; re-en. Sec. 644, 1st Div. Comp. Stat. 1887; amd. Sec. 3291, C. Civ. Proc. 1895; re-en. Sec. 7973, Rev. C.

1907; re-en. Sec. 10617, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1982; re-en. Sec. 10617, R.C.M. 1935; R.C.M. 1947, 93-1501-2.

Cross-References

Interpretation of instruments, Title 1, ch. 4, part 1.

When extrinsic evidence concerning a written agreement may be considered, 28-2-905.

How written contract may be altered by parties, 28-2-1602.

Final written expression — parol or extrinsic evidence, 30-2-202.

26-1-107. Repealed. Sec. 20, Ch. 72, L. 1983.

History: En. Sec. 3233, C. Civ. Proc. 1895; re-en. Sec. 7946, Rev. C. 1907; re-en. Sec. 10590, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1942; re-en. Sec. 10590, R.C.M. 1935; R.C.M. 1947, 93-1101-13.

26-1-108. Repealed. Sec. 20, Ch. 72, L. 1983.

History: En. Sec. 3236, C. Civ. Proc. 1895; re-en. Sec. 7949, Rev. C. 1907; re-en. Sec. 10593, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1945; re-en. Sec. 10593, R.C.M. 1935; R.C.M. 1947, 93-1101-16.

Part 2

Province of Court and Jury

26-1-201. Questions of law. Except as provided in Article II, section 7, of the Montana constitution, all questions of law, including the admissibility of testimony, the facts preliminary to such admission, the construction of statutes and other writings, and other rules of evidence, must be decided by the court.

History: En. Sec. 3441, C. Civ. Proc. 1895; re-en. Sec. 8055, Rev. C. 1907; re-en. Sec. 10699, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2102; re-en. Sec. 10699, R.C.M. 1935; R.C.M. 1947, 93-2501-2; amd. Sec. 3, Ch. 72, L. 1983.

Cross-References

Criminal actions — similar provision, 25-7-102.

Questions of admissibility of evidence, Rules 101 and 104, M.R.Ev. (see Title 26, ch. 10).

Judicial notice of law — determination of law made by court, Rule 202, M.R.Ev. (see Title 26, ch. 10).

Libel and slander, Title 27, ch. 1, part 8.

Criminal prosecutions — questions of law and fact, 46-16-103.

Criminal defamation — jury to determine law and fact, 46-16-103.

Justices' and City Courts — criminal actions, 46-17-201.

26-1-202. Questions of fact. If a trial is by jury, all questions of fact other than those mentioned in 26-1-201 must be decided by the jury, and all evidence thereon must be addressed to them, except as otherwise provided by law. If the trial of a question of fact is not by jury, all evidence thereon must be addressed to the trial court, which shall decide such question.

History: En. Sec. 3440, C. Civ. Proc. 1895; re-en. Sec. 8054, Rev. C. 1907; re-en. Sec. 10698, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2101; re-en. Sec. 10698, R.C.M. 1935; R.C.M. 1947, 93-2501-1; amd. Sec. 4, Ch. 72, L. 1983.

Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.

Jury — definition and duty, 3-15-101.

Jury to decide fact — evidence addressed to them, 25-7-103.

No issues of fact — directed verdict, 25-7-302.

Waiver of findings of fact, 25-7-601.

Trial upon agreed statement of facts, 25-7-602.

Criminal prosecutions — questions of law and fact, 46-16-103.

Justices' and City Courts — criminal actions, 46-17-201.

26-1-203. Who to judge effect and value of evidence. The jury, subject to the control of the court, is the judge of the effect and value of evidence addressed to it, except when the evidence is declared to be conclusive. The court is the judge of the effect and value of evidence addressed to it.

History: **En. Sec. 3390, C. Civ. Proc. 1895; re-en. Sec. 8028, Rev. C. 1907; re-en. Sec. 10672, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2061; re-en. Sec. 10672, R.C.M. 1935; R.C.M. 1947, 93-2001-1(part); amd. Sec. 5, Ch. 72, L. 1983.**

Cross-References

Evidence addressed to jury, 25-7-103.

No issues of fact — directed verdict, 25-7-302.

Part 3

Weight and Effect of Evidence

26-1-301. One witness sufficient to prove a fact. The direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact, except perjury and treason.

History: **En. Sec. 598, p. 195, L. 1877; re-en. Sec. 598, 1st Div. Rev. Stat. 1879; re-en. Sec. 616, 1st Div. Comp. Stat. 1887; re-en. Sec. 3120, C. Civ. Proc. 1895; re-en. Sec. 7861, Rev. C. 1907; re-en. Sec. 10505, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1844; re-en. Sec. 10505, R.C.M. 1935; R.C.M. 1947, 93-401-1.**

Cross-References

Competency of witnesses, Rule 601, M.R.Ev. (see Title 26, ch. 10).

Perjury — evidence required, 45-7-201.

Treason — evidence required, 46-16-202.

26-1-302. Witness presumed to speak the truth — how presumption rebutted. A witness is presumed to speak the truth. The jury or the court in the absence of a jury is the exclusive judge of his credibility. This presumption may be controverted and overcome by any matter that has a tendency to disprove the truthfulness of a witness' testimony; such matters include but are not limited to:

(1) the demeanor or manner of the witness while testifying;

(2) the character of the witness' testimony;

(3) bias of the witness for or against any party involved in the case;

(4) interest of the witness in the outcome of the litigation or other motive to testify falsely;

(5) the witness' character for truth, honesty, or integrity;

(6) the extent of the witness' capacity and opportunity to perceive or capacity to recollect or to communicate any matter about which he testifies;

(7) inconsistent statements of the witness;

(8) an admission of untruthfulness by the witness;

(9) other evidence contradicting the witness' testimony.

History: **En. Sec. 601, p. 195, L. 1877; re-en. Sec. 601, 1st Div. Rev. Stat. 1879; re-en. Sec. 619, 1st Div. Comp. Stat. 1887; re-en. Sec. 3123, C. Civ. Proc. 1895; re-en. Sec. 7864, Rev. C. 1907; re-en. Sec. 10508, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1847; re-en. Sec. 10508, R.C.M. 1935; R.C.M. 1947, 93-401-4; amd. Sec. 6, Ch. 72, L. 1983.**

Cross-References

Evidence of character and conduct of a witness, Rule 608, M.R.Ev. (see Title 26, ch. 10).

Perjury, 45-7-201.

26-1-303. Instructions to jury on how to evaluate evidence. The jury is to be instructed by the court on all proper occasions that:

(1) their power of judging the effect of evidence is not arbitrary but to be exercised with legal discretion and in subordination to the rules of evidence;

(2) they are not bound to decide in conformity with the declarations of any number of witnesses which do not produce conviction in their minds, against a less number or against a presumption or other evidence satisfying their minds;

(3) a witness false in one part of his testimony is to be distrusted in others;

(4) the testimony of a person legally accountable for the acts of the accused ought to be viewed with distrust;

(5) if weaker and less satisfactory evidence is offered and it appears that it is within the power of the party to offer stronger and more satisfactory evidence, the evidence offered should be viewed with distrust.

History: En. Sec. 3390, C. Civ. Proc. 1895; re-en. Sec. 8028, Rev. C. 1907; re-en. Sec. 10672, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2061; re-en. Sec. 10672, R.C.M. 1935; R.C.M. 1947, 93-2001-1(part)(1) thru (4), (6), (7); amd. Sec. 7, Ch. 72, L. 1983.

Cross-References

Instructions to jury — civil procedure, Rule 51, M.R.Civ.P. (see Title 25, ch. 20).

Presumption regarding weaker, less satisfactory evidence, 26-1-602.

Exemplary or punitive damages — restrictions on instructing jury, 27-1-221.

Person legally accountable for conduct of another, 45-2-302.

Testimony of person legally accountable, 46-16-213.

Instructions to jury — criminal actions, 46-16-401.

Part 4

Burdens of Proof

26-1-401. Who has the burden of producing evidence. The initial burden of producing evidence as to a particular fact is on the party who would be defeated if no evidence were given on either side. Thereafter, the burden of producing evidence is on the party who would suffer a finding against him in the absence of further evidence.

History: En. Sec. 3290, C. Civ. Proc. 1895; re-en. Sec. 7972, Rev. C. 1907; re-en. Sec. 10616, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1981; re-en. Sec. 10616, R.C.M. 1935; R.C.M. 1947, 93-1501-1; amd. Sec. 8, Ch. 72, L. 1983.

Cross-References

Pleading generally, Rule 8, M.R.Civ.P. (see Title 25, ch. 20).

Awarding exemplary or punitive damages — special burden of proof, 27-1-221.

Homicide trial — burden of state, 45-5-111, 45-5-112.

26-1-402. Who has the burden of persuasion. Except as otherwise provided by law, a party has the burden of persuasion as to each fact the existence or nonexistence of which is essential to the claim for relief or defense he is asserting.

History: En. Sec. 623, p. 201, L. 1877; re-en. Sec. 623, 1st Div. Rev. Stat. 1879; re-en. Sec. 641, 1st Div. Comp. Stat. 1887; re-en. Sec. 3145, C. Civ. Proc. 1895; re-en. Sec. 7886, Rev. C. 1907; re-en. Sec. 10530, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1869; re-en. Sec. 10530, R.C.M. 1935; R.C.M. 1947, 93-401-26; amd. Sec. 9, Ch. 72, L. 1983.

Cross-References

Pleading — affirmative allegations, Rule 8, M.R.Civ.P. (see Title 25, ch. 20).

Production of documents, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

26-1-403. Instructions to jury on standard of proof required to meet burden of persuasion. The jury is to be instructed by the court on all proper occasions:

(1) that in civil cases the affirmative of the issue must be proved, and when the evidence is contradictory, the decision must be made according to the preponderance of the evidence; and

(2) that in criminal cases guilt must be established beyond reasonable doubt.

History: En. Sec. 3390, C. Civ. Proc. 1895; re-en. Sec. 8028, Rev. C. 1907; re-en. Sec. 10672, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2061; re-en. Sec. 10672, R.C.M. 1935; R.C.M. 1947, 93-2001-1(part).

Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.

Awarding exemplary or punitive damages — special burden of proof, 27-1-221.

Criminal defendants — presumption of innocence — reasonable doubt of guilt, 46-16-601.

Part 5

Inferences

Part Cross-References

Conduct of jury after case submitted to it, 25-7-403.

26-1-501. Inference defined. An "inference" is a deduction which the trier of fact may make from the evidence.

History: En. Sec. 3261, C. Civ. Proc. 1895; re-en. Sec. 7957, Rev. C. 1907; re-en. Sec. 10601, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1958; re-en. Sec. 10601, R.C.M. 1935; R.C.M. 1947, 93-1301-2; amd. Sec. 10, Ch. 72, L. 1983.

26-1-502. When an inference arises. An inference must be founded:

(1) on a fact legally proved; and

(2) on such a deduction from that fact as is warranted by a consideration of the usual propensities or passions of men, the particular propensities or passions of the person whose act is in question, the course of business, or the course of nature.

History: En. Sec. 3263, C. Civ. Proc. 1895; re-en. Sec. 7959, Rev. C. 1907; re-en. Sec. 10603, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1960; re-en. Sec. 10603, R.C.M. 1935; R.C.M. 1947, 93-1301-4.

Cross-References

When issues of fact to be decided by jury, 25-7-103.

Conduct of jury after case submitted to it, 25-7-403.

Part 6

Presumptions

26-1-601. List of conclusive presumptions. The following presumptions are conclusive:

(1) the truth of a declaration, act, or omission of a party, as against that party in any litigation arising out of such declaration, act, or omission, whenever he has, by such declaration, act, or omission, intentionally led another to believe a particular thing true and to act upon such belief;

(2) that a tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation;

(3) the judgment or order of a court, which is declared by statute to be conclusive;

(4) any other presumption which, by statute, is expressly made conclusive.

History: En. Sec. 3265, C. Civ. Proc. 1895; re-en. Sec. 7961, Rev. C. 1907; re-en. Sec. 10605, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1962; re-en. Sec. 10605, R.C.M. 1935; R.C.M. 1947, 93-1301-6; amd. Sec. 11, Ch. 72, L. 1983.

Cross-References

Own wrong — no advantage, 1-3-208.

Judgment — pleading, Rule 9, M.R.Civ.P. (see Title 25, ch. 20).

List of statutory conclusive presumptions, see Part I, Table D, in compiler's comment, Title 26, ch. 1, part 6.

Effect of former judgments and orders, Title 26, ch. 3.

Conclusive judgments, 26-3-201.

Judicially noticed facts — as conclusive — civil actions, Rule 201, M.R.Ev. (see Title 26, ch. 10).

Presumptions — definition and evidentiary effect, Rule 301, M.R.Ev. (see Title 26, ch. 10).

Consideration, Title 28, ch. 2, part 8.

Legitimacy of children born in wedlock, 40-6-201.

Criminal intent — "knowingly" and "purposely", 45-2-101.

Adverse possession — relation of landlord and tenant, 70-19-412.

26-1-602. Disputable presumptions. All other presumptions are "disputable presumptions" and may be controverted by other evidence. The following are of that kind:

(1) A person is innocent of crime or wrong.

(2) An unlawful act was done with an unlawful intent.

(3) A person intends the ordinary consequence of his voluntary act.

(4) A person takes ordinary care of his own concerns.

(5) Evidence willfully suppressed would be adverse if produced.

(6) More satisfactory evidence would be adverse if weaker and less satisfactory evidence is offered and it is within the power of the party to offer more satisfactory evidence.

(7) Money paid by one to another was due the latter.

(8) A thing delivered by one to another belonged to the latter.

(9) When the instrument evidencing an obligation has been delivered to the debtor, the obligation has been paid.

(10) Prior rent or installments have been paid when a receipt for later rent or installments is produced.

(11) Things which a person possesses are owned by him.

(12) A person is the owner of property if he exercises acts of ownership over it or there is common reputation of his ownership.

(13) A person in possession of an order on himself for the payment of money or the delivery of a thing has paid the money or delivered the thing accordingly.

(14) A person acting in a public office was regularly appointed to it.

(15) Official duty has been regularly performed.

(16) A court or judge acting as such, whether in this state or any other state or country, was acting in the lawful exercise of its or his jurisdiction.

(17) A judicial record, when not conclusive, does still correctly determine or set forth the rights of the parties.

(18) All matters within an issue were laid before the jury and passed upon by them, and in like manner, all matters within a submission to arbitration were laid before the arbitrators and passed upon by them.

(19) Private transactions have been fair and regular.

(20) The ordinary course of business has been followed.

(21) A promissory note or bill of exchange was given or endorsed for a sufficient consideration.

(22) An endorsement of a negotiable promissory note or bill of exchange was made at the time and place of making the note or bill.

(23) A writing is truly dated.

(24) A letter duly directed and mailed was received in the regular course of the mail.

(25) There is an identity of persons when there is an identity of names.

(26) A person not heard from in 7 years is dead.

(27) Acquiescence followed from a belief that the thing acquiesced in was conformable to the right or fact.

(28) Things have happened according to the ordinary course of nature and the ordinary habits of life.

(29) Persons acting as partners have entered into a contract of partnership.

(30) A man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage.

(31) A child born in lawful wedlock, there being no divorce from bed and board, is legitimate.

(32) A thing once proved to exist continues as long as is usual with things of that nature.

(33) The law has been obeyed.

(34) A printed and published book purporting to be printed or published by public authority was so printed or published.

(35) A printed and published book purporting to contain reports of cases adjudged in the tribunals of the state or country where the book is published contains correct reports of such cases.

(36) A trustee or other person whose duty it was to convey real property to a particular person has actually conveyed to him. This presumption applies when it is necessary to perfect the title of such person or his successor in interest.

(37) When there has been uninterrupted use by the public of land for a burial ground for 5 years, with the consent of the owner and without a reservation of his rights, he intended to dedicate it to the public for that purpose.

(38) There was a good and sufficient consideration for a written contract.

History: En. Sec. 3266, C. Civ. Proc. 1895; re-en. Sec. 7962, Rev. C. 1907; re-en. Sec. 10606, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1963; re-en. Sec. 10606, R.C.M. 1935; amd. Sec. 9, Ch. 20, L. 1951; R.C.M. 1947, 93-1301-7; amd. Sec. 12, Ch. 72, L. 1983.

Cross-References

Presumption that internal references in MCA are to law as it may be amended or changed, 1-2-108.

No presumption of legislative intent drawn from code classification or arrangement, 1-11-103.

MCA — prima facie the official laws of state, 1-11-103.

Adoption of administrative rules — objection by Administrative Code Committee — presumption of agency correctness reversed, 2-4-406.

Offering weaker and less satisfactory evidence — jury instruction, 26-1-303.

List of other statutory and common-law disputable presumptions, see Parts II and III, Table D, in compiler's comment, Title 26, ch. 1, part 6.

Conclusive order or judgment of court, 26-3-201.

Presumptions — definition and evidentiary effect, Rule 301, M.R.Ev. (see Title 26, ch. 10).

Self-authenticating documents or publications, Rule 902, M.R.Ev. (see Title 26, ch. 10).

Consideration, Title 28, ch. 2, part 8.

Partnership — rules for determining existence, 35-10-202.

Common-law marriages, 40-1-403.

Legitimacy of children born in wedlock, 40-6-201.

Presumption of forfeiture — seizures related to controlled substances, 44-12-203.

Presumption of offensive or aggressive purpose, 45-8-305.

Presumption from failure to register machine guns, 45-8-309.

Presumption of innocence, 46-16-601.

Child restraints in motor vehicles — failure to use — no presumption of negligence, 61-9-422.

Delivery of property — grant, 70-1-508.

Evidence of death, 72-1-108.

Presumption of death — 7-year period, 72-1-108.

26-1-603. Books containing laws presumed correct. Books printed or published under the authority of a sister state or foreign country and purporting to contain the statutes, code, or other written law of such state or country or proved to be commonly admitted in the tribunals of such state or country as evidence of the written law thereof are admissible in this state as evidence of such law.

History: En. Sec. 370, p. 120, Bannack Stat.; re-en. Sec. 428, p. 221, L. 1867; re-en. Sec. 502, p. 137, Cod. Stat. 1871; rep. Sec. 674, p. 215, L. 1877; re-en. Sec. 12, p. 12, L. 1881; re-en. Sec. 646, 1st Div. Comp. Stat. 1887; en. Sec. 3188, C. Civ. Proc. 1895; re-en. Sec. 7906, Rev. C. 1907; re-en. Sec. 10550, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1900; re-en. Sec. 10550, R.C.M. 1935; R.C.M. 1947, 93-1001-12.

Cross-References

Determination of foreign law, Rule 44.1, M.R.Civ.P. (see Title 25, ch. 20).

Judicial notice of law, Rule 202, M.R.Ev. (see Title 26, ch. 10).

Self-authenticating documents or publications, Rule 902, M.R.Ev. (see Title 26, ch. 10).

26-1-604. When recitals in statutes conclusive. The recitals in a public statute are conclusive evidence of the facts recited for the purpose of carrying it into effect, but no further. The recitals in a private statute are conclusive evidence between parties who claim under its provisions, but no further.

History: En. Sec. 3191, C. Civ. Proc. 1895; re-en. Sec. 7909, Rev. C. 1907; re-en. Sec. 10553, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1903; re-en. Sec. 10553, R.C.M. 1935; R.C.M. 1947, 93-1001-15.

Cross-References

Public and private statutes, 1-1-106.

26-1-605. Entries in official books and records prima facie evidence. Entries in public or other official books or records made in the performance of his duty by a public officer of this state or any other person in the performance of a duty specially enjoined by law are prima facie evidence of the facts stated therein.

History: En. Sec. 3208, C. Civ. Proc. 1895; re-en. Sec. 7926, Rev. C. 1907; re-en. Sec. 10570, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1920; re-en. Sec. 10570, R.C.M. 1935; R.C.M. 1947, 93-1001-32.

Cross-References

Public records generally, Title 2, ch. 6.

Reproduction of records — Secretary of State — evidentiary effect, 2-6-111.

County records — substitution by reproduction, 7-4-2222.

Role and duties of County Clerk, 7-4-2611.

Municipal clerk, Title 7, ch. 4, part 45.

Proof of official record, Rule 44, M.R.Civ.P. (see Title 25, ch. 20).

26-1-606. Entry made by officer or board prima facie evidence. An entry made by an officer or board of officers or under the direction and in the presence of either, in the course of official duty, is prima facie evidence of the facts stated in such entry.

History: En. Sec. 3214, C. Civ. Proc. 1895; re-en. Sec. 7932, Rev. C. 1907; re-en. Sec. 10576, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1926; re-en. Sec. 10576, R.C.M. 1935; R.C.M. 1947, 93-1001-38.

Cross-References

Public records, Title 2, ch. 6.

Duties of Secretary of State — public records, 2-6-111.

Duties of County Clerk, 7-4-2611.

Municipal clerk, Title 7, ch. 4, part 45.

26-1-607. When writings of a decedent prima facie evidence. The entries and other writings of a decedent, made at or near the time of the transaction and when the decedent was in a position to know the facts stated therein, are prima facie evidence of the facts stated therein, in the following cases:

(1) when the writing or entry was made against the interest of the person making it;

(2) when it was made in a professional capacity and in the ordinary course of professional conduct;

(3) when it was made in the performance of a duty specially enjoined by law.

History: En. Sec. 3237, C. Civ. Proc. 1895; re-en. Sec. 7950, Rev. C. 1907; re-en. Sec. 10594, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1946; re-en. Sec. 10594, R.C.M. 1935; R.C.M. 1947, 93-1101-17; amd. Sec. 13, Ch. 72, L. 1983.

26-1-608 through 26-1-620 reserved.

26-1-621. Repealed. Sec. 20, Ch. 72, L. 1983.

History: En. Sec. 1, Ch. 14, L. 1947; R.C.M. 1947, 93-1001-39.

26-1-622. Official reports and records made pursuant to federal law prima facie evidence. An official written report or record, or duly certified copy thereof, that a person is dead or alive; missing; missing in action; interned in a neutral country; or beleaguered, besieged, or captured by an enemy, made by any officer or employee of the United States authorized by law of the United States to make same, shall be received in any court, office, or other place in this state as prima facie evidence that such person is dead or alive; missing; missing in action; interned in a neutral country; or beleaguered, besieged, or captured by an enemy, as the case may be.

History: En. Sec. 2, Ch. 14, L. 1947; R.C.M. 1947, 93-1001-40; amd. Sec. 14, Ch. 72, L. 1983.

Cross-References

Fee waiver — children of prisoners of war and persons killed in action, 10-2-312.

Uniform Probate Code — evidence of death, 72-1-108.

26-1-623. Presumption of authenticity of finding, report, or record. For the purposes of 26-1-622, any finding, report, or record or duly certified copy thereof purporting to have been signed by such an officer or employee of the United States as is described in that section shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing same shall prima facie be deemed to have acted within the scope of his authority. If a copy purports to have been certified by a person authorized by law to certify the same, such certified copy shall be prima facie evidence of his authority so to certify.

History: En. Sec. 3, Ch. 14, L. 1947; R.C.M. 1947, 93-1001-41; amd. Sec. 15, Ch. 72, L. 1983.

Cross-References

Authentication and identification, Art. IX, M.R. Ev. (see Title 26, ch. 10).

Public records, Rule 1005, M.R. Ev. (see Title 26, ch. 10).

Uniform Probate Code — evidence of death, 72-1-108.

Part 7

Voluntary Payment of Claims

Part Cross-References

Offers of judgment — not admissible:

District Court, Rule 68, M.R.Civ.P. (see Title 25, ch. 20).

Municipal Court, 25-30-101.

Justice's Court, 25-31-116.

Compromise and offers to compromise — not admissible, Rule 408, M.R.Ev. (see Title 26, ch. 10).

Agreements settling or compromising abolished causes of action, 27-1-605.

Liability, Title 27, ch. 1, part 7.

26-1-701. Legislative policy. The legislature hereby declares that the health, welfare, and safety of the people of the state of Montana would be enhanced by the expeditious handling of liability claims. The legislature further declares that the handling of such claims would be expedited if voluntary payment by or on behalf of one person to or on behalf of a person who has sustained injury to his person or damage to his property could not be construed as an admission of fault or liability as to any claim arising out of the occurrence which gave rise to such injury or damage.

History: En. Sec. 1, Ch. 222, L. 1973; R.C.M. 1947, 93-2201-7.

26-1-702. Person defined. As used in this part, the word "person" includes any individual, partnership, joint venture, unincorporated association, private or municipal corporation, the state and its political subdivisions.

History: En. Sec. 2, Ch. 222, L. 1973; R.C.M. 1947, 93-2201-8.

26-1-703. Voluntary partial payment of claim not an admission of fault or waiver. No voluntary partial payment of a claim against any person based on alleged liability of that person for injury to person, including death, or damage to property arising out of any occurrence shall be construed as an admission of fault or liability or as a waiver or release of claim by the person to whom or in whose behalf such payment was made. No voluntary partial payment shall be construed to reduce the amount of damages which may be pleaded or proved in any action arising out of such occurrence.

History: En. Sec. 3, Ch. 222, L. 1973; R.C.M. 1947, 93-2201-9(part).

Cross-References

Compromise negotiations — not admissible as to liability, Rule 408, M.R.Ev. (see Title 26, ch. 10).

Payment of injury expenses — not admissible as to liability, Rule 409, M.R.Ev. (see Title 26, ch. 10).

26-1-704. Fact of payment and amount inadmissible as evidence. The fact of any such voluntary payment or its amount shall not be admissible as evidence on the trial of any action arising out of such occurrence, whether on the issue of liability, the extent of the damage, or otherwise.

History: En. Sec. 3, Ch. 222, L. 1973; R.C.M. 1947, 93-2201-9(part).

Cross-References

Compromise negotiations not admissible as to liability, Rule 408, M.R.Ev. (see Title 26, ch. 10).

Payment of injury expenses not admissible as to liability, Rule 409, M.R.Ev. (see Title 26, ch. 10).

26-1-705. Effect of payment upon final settlement. Upon final settlement between the parties of a claim arising out of such occurrence, the parties may make any agreement they wish with respect to all voluntary partial payments.

History: En. Sec. 3, Ch. 222, L. 1973; R.C.M. 1947, 93-2201-9(part).

26-1-706. Effect of payment on judgment. After entry of a judgment in an action for damages for personal injuries, including death, or for damage to property arising out of any occurrence, any voluntary partial payment theretofore made shall be treated as a credit against such judgment and shall be deductible from the amount of such judgment. If after partial voluntary payments are made as herein provided for, it shall be determined by a court of competent jurisdiction that the person who made such payments or on whose behalf such payments were made is liable for an amount which is less than the amount of the voluntary payments already made, such person shall have no right of action for the recovery of the amount by which the voluntary payments exceeded the amount of the judgment.

History: En. Sec. 3, Ch. 222, L. 1973; R.C.M. 1947, 93-2201-9(part).

Cross-References

Judgment, Title 25, ch. 9.

Execution of judgment, Title 25, ch. 13.

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Part 8

Privileges

Part Cross-References

Applicability of Montana Rules of Evidence, Art. V, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

Waiver of privilege, Rule 503, M.R.Ev. (see Title 26, ch. 10).

Gunshot or stab wounds — reporting by health care practitioners, 37-2-302.

Licensed social workers — privilege, 37-22-401.

Public accountants — privilege, 37-50-402.

Examination and treatment of a child — dependent and neglect proceedings — reports — attorney-client only privilege, 41-3-204, 41-3-404.

Investigative subpoenas — privileges apply, 46-4-305.

Criminal actions — privilege extends to discovery, 46-15-332.

Deaf — interpreter privilege, 49-4-511.

Admissibility of evidence contained in report under Montana Elder Abuse Prevention Act, 53-5-521.

26-1-801. Policy to protect confidentiality in certain relations. There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the cases enumerated in this part.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1,

Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(part).

Cross-References

Privileges recognized only as provided, Rule 501, M.R.Ev. (see Title 26, ch. 10).

26-1-802. Spousal privilege. A husband cannot be examined for or against his wife without her consent or a wife for or against her husband without his consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other or to a criminal action or proceeding for a crime committed by one against the other.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(1).

Cross-References

Marriage, Title 40, ch. 1.

Right of person to sue spouse for intentional tort, 40-2-109.

Reciprocal enforcement of support proceedings — no privilege, 40-5-123.

Child dependent and neglect proceedings — no privilege, 41-3-404.

Spousal exclusions applicable to sexual crimes, 45-5-511.

Promoting prostitution — testimony of spouse, 45-5-604.

Crime against spouse or children — no privilege, 46-16-212.

26-1-803. Attorney-client privilege. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him or his advice given thereon in the course of professional employment.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(2).

Cross-References

Supreme Court — authority over conduct of bar, Art. VII, sec. 2, Mont. Const.

Attorneys — generally, Title 37, ch. 61.

Delinquent youth — privilege, 41-5-402.

26-1-804. Confessions made to member of clergy. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(3).

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

26-1-805. Doctor-patient privilege. Except as provided in Rule 35, Montana Rules of Civil Procedure, a licensed physician, surgeon, or dentist cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(4); amd. Sec. 16, Ch. 72, L. 1983; amd. Sec. 1, Ch. 400, L. 1987.

Compiler's Comments

1987 Amendment: Near middle of section, after "surgeon", inserted "or dentist".

Cross-References

Civil procedure — physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Diagnosis of condition which impairs patient's ability to safely operate motor vehicle — report to Department of Justice — limits on admissibility of report, 37-2-311.

Physicians — generally, Title 37, ch. 3.

Artificial insemination — confidential, 40-6-106.

Treatment of minor — disclosure to spouse or parents not violative of privilege, 41-1-403.

Examination and treatment of child — dependency and neglect — no privilege, 41-3-404.

In-hospital medical staff committees — extension of privilege, 50-16-203.

Confidentiality of health care information, Title 50, ch. 16, part 5.

26-1-806. Speech pathologist, audiologist-client privilege. A speech pathologist or audiologist cannot, without the consent of his client, be examined in a civil action as to any communication made by the client to him.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(8).

Cross-References

Speech pathologists and audiologists, Title 37, ch. 15.

Child dependency and neglect proceedings — no privilege, 41-3-404.

26-1-807. Psychologist-client privilege. The confidential relations and communications between a psychologist and his client shall be placed on the same basis as provided by law for those between an attorney and his client. Nothing in any act of the legislature shall be construed to require such privileged communications to be disclosed.

History: En. Sec. 12, Ch. 73, L. 1971; R.C.M. 1947, 66-3212.

Cross-References

Civil procedure — mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Psychologists, Title 37, ch. 17.

Child — dependency and neglect proceedings — no privilege, 41-3-404.

Psychiatric testimony — criminal actions — issue of mental disease or defect, 46-14-213.

Psychiatric examination for criminal actions — admissibility, 46-14-401.

26-1-808. Information gathered by psychology teachers and observers. Any person who is engaged in teaching psychology in any school or who, acting as such, is engaged in the study and observation of child mentality shall not, without the consent of the parent or guardian of such child being so taught or observed, testify in any civil action as to any information so obtained.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(6).

Cross-References

Parent and child, Title 40, ch. 6.

26-1-809. Confidential communications by student to employee of educational institution. A counselor, psychologist, nurse, or teacher employed by any educational institution cannot be examined as to communications made to him in confidence by a duly registered student of such institution. However, this provision shall not apply where consent has been given by the student, if not a minor, or, if he is a minor, by the student and his parent or legal guardian.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(7).

Cross-References

Application of privileges — child abuse, neglect, and dependency, 41-3-204, 41-3-404.

26-1-810. Confidential communications made to public officer. A public officer cannot be examined as to communications made to him in official confidence when the public interests would suffer by the disclosure.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(5).

Cross-References

Offenses against public administration, Title 45, ch. 7.

26-1-811. Mediator privilege. Except as otherwise provided by law, a person acting as a mediator in a family law mediation cannot, without the consent of the parties to the mediation, be examined in a civil action as to any communication made by a party to him during the course of the mediation.

History: En. Sec. 1, Ch. 364, L. 1987.

Part 9

Media Confidentiality Act

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

26-1-901. Short title. This part shall be known and may be cited as the "Media Confidentiality Act".

History: En. Sec. 1, Ch. 195, L. 1943; R.C.M. 1947, 93-601-1; amd. Sec. 1, Ch. 285, L. 1979.

26-1-902. Extent of privilege. (1) Without his or its consent no person, including any newspaper, magazine, press association, news agency, news service, radio station, television station, or community antenna television service or any person connected with or employed by any of these for the purpose of gathering, writing, editing, or disseminating news may be examined as to or may be required to disclose any information obtained or prepared or the source of that information in any legal proceeding if the information was gathered, received, or processed in the course of his employment or its business.

(2) A person described in subsection (1) may not be adjudged in contempt by a judicial, legislative, administrative, or any other body having the power to issue subpoenas for refusing to disclose or produce the source of any information or for refusing to disclose any information obtained or prepared in gathering, receiving, or processing information in the course of his or its business.

History: En. Sec. 2, Ch. 195, L. 1943; amd. Sec. 1, Ch. 56, L. 1951; amd. Sec. 1, Ch. 225, L. 1977; R.C.M. 1947, 93-601-2(1), (2); amd. Sec. 2, Ch. 285, L. 1979.

Cross-References

Contempt of court, Title 3, ch. 1, part 5.

Contempt of Legislature, 5-5-103.

26-1-903. Waiver of privilege. (1) Dissemination, except as provided in subsection (2), in whole or in part does not constitute a waiver of provisions of 26-1-902.

(2) If the person claiming the privilege voluntarily offers to testify or to produce the source, with or without having been subpoenaed or ordered to testify or produce the source, before a judicial, legislative, administrative, or other body having the power to issue subpoenas or judicially enforceable orders, he or it waives the provisions of 26-1-902. Except as provided in this subsection, the provisions of 26-1-902 may not be waived.

History: En. Sec. 2, Ch. 195, L. 1943; amd. Sec. 1, Ch. 56, L. 1951; amd. Sec. 1, Ch. 225, L. 1977; R.C.M. 1947, 93-601-2(3), (4); amd. Sec. 3, Ch. 285, L. 1979.

Cross-References

Administrative subpoenas, 2-4-611.

Legislative subpoenas, 5-5-101.

Subpoenas — generally, Title 26, ch. 2, part 1.

Waiver of privilege by voluntary disclosure, Rule 503, M.R.Ev. (see Title 26, ch. 10).

Investigative subpoenas, Title 46, ch. 4, part 3.

Part 10

Affidavits

26-1-1001. Affidavit defined. An "affidavit" is a written declaration under oath, made without notice to the adverse party.

History: En. Sec. 3321, C. Civ. Proc. 1895; re-en. Sec. 7988, Rev. C. 1907; re-en. Sec. 10632, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2003; re-en. Sec. 10632, R.C.M. 1935; R.C.M. 1947, 93-1601-2.

Cross-References
Oaths, Title 1, ch. 6, part 1.

26-1-1002. Permissible uses for affidavits. An affidavit may be used:

(1) to verify a pleading or a paper in a special proceeding;

(2) to prove the service of a summons, notice, or other paper in an action or special proceeding;

(3) to obtain a provisional remedy, the examination of a witness, or a stay of proceedings;

(4) upon a motion; and

(5) in any other case expressly permitted by some other provision of this code.

History: En. Sec. 3330, C. Civ. Proc. 1895; re-en. Sec. 7992, Rev. C. 1907; re-en. Sec. 10636, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2009; re-en. Sec. 10636, R.C.M. 1935; R.C.M. 1947, 93-1701-1.

Cross-References
Expected evidence — affidavit supporting, 25-4-501, 25-4-502.
Evidence on motions — required oral testimony, Rule 43(e), M.R.Civ.P. (see Title 25, ch. 20).
Proceedings for summary judgments, Rule 56(e), M.R.Civ.P. (see Title 25, ch. 20).
Summary judgment — costs for affidavits made in bad faith, Rule 56(g), M.R.Civ.P. (see Title 25, ch. 20).

26-1-1003. Affidavits made in this state — before whom taken. An affidavit to be used before any court, judge, or officer of this state may be taken before any judge or clerk of any court or any justice of the peace, county clerk, or notary public in this state.

History: En. Sec. 336, p. 113, Bannack Stat.; re-en. Sec. 399, p. 215, L. 1867; re-en. Sec. 473, p. 130, Cod. Stat. 1871; re-en. Sec. 651, p. 208, L. 1877; re-en. Sec. 651, 1st Div. Rev. Stat. 1879; re-en. Sec. 672, 1st Div. Comp. Stat. 1887; re-en. Sec. 3333, C. Civ. Proc. 1895; re-en. Sec. 7995, Rev. C. 1907; re-en. Sec. 10639, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2012; re-en. Sec. 10639, R.C.M. 1935; R.C.M. 1947, 93-1701-4.

Cross-References
Military officers — execution, 1-5-105.
Notaries public, 1-5-416.
Supreme Court Justices, District Court Judges, and Justices of the Peace, 3-1-404.
Court Clerk — generally, Title 7, ch. 4, part 26.

26-1-1004. Affidavits made in another state — before whom taken. An affidavit taken in another state of the United States to be used in this state may be taken before a commissioner appointed by the governor of this state to take affidavits and depositions in such other state, before any notary public in another state, or before any judge or clerk of a court of record having a seal.

History: En. Sec. 337, p. 113, Bannack Stat.; amd. Sec. 400, p. 215, L. 1867; amd. Sec. 474, p. 130, Cod. Stat. 1871; re-en. Sec. 652, p. 208, L. 1877; re-en. Sec. 652, 1st Div. Rev. Stat. 1879; re-en. Sec. 673, 1st Div. Comp. Stat. 1887; amd. Sec. 3334, C. Civ. Proc. 1895; re-en. Sec. 7996, Rev. C. 1907; re-en. Sec. 10640, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2013; re-en. Sec. 10640, R.C.M. 1935; R.C.M. 1947, 93-1701-5.

Cross-References
Seals, Title 1, ch. 4, part 2.
Military officers — execution, 1-5-105.

26-1-1005. Affidavits made in foreign country — before whom taken. An affidavit taken in a foreign country to be used in this state may be taken before an ambassador, minister, consul, vice consul, or consular agent of the United States or before any judge of a court of record having a seal in such foreign country.

History: En. Sec. 338, p. 113, Bannack Stat.; amd. Sec. 401, p. 215, L. 1867; amd. Sec. 475, p. 130, Cod. Stat. 1871; re-en. Sec. 653, p. 208, L. 1877; re-en. Sec. 653, 1st Div. Rev. Stat. 1879; re-en. Sec. 674, 1st Div. Comp. Stat. 1887; amd. Sec. 3335, C. Civ. Proc. 1895; re-en. Sec. 7997, Rev. C. 1907; re-en. Sec. 10641, R.C.M. 1921, Cal. C. Civ. Proc. Sec. 2014; re-en. Sec. 10641, R.C.M. 1935; R.C.M. 1947, 93-1701-6.

Cross-References

Acceptance of foreign seals, 1-4-203.

26-1-1006. Verification of affidavit taken out of state. When an affidavit is taken before a judge of a court in another state or in a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that such judge is a member thereof must be certified by the clerk of the court, under the seal thereof.

History: En. Sec. 339, p. 113, Bannack Stat.; amd. Sec. 402, p. 215, L. 1867; re-en. Sec. 476, p. 130, Cod. Stat. 1871; re-en. Sec. 654, p. 208, L. 1877; re-en. Sec. 654, 1st Div. Rev. Stat. 1879; re-en. Sec. 675, 1st Div. Comp. Stat. 1887; re-en. Sec. 3336, C. Civ. Proc. 1895; re-en. Sec. 7998, Rev. C. 1907; re-en. Sec. 10642, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2015; re-en. Sec. 10642, R.C.M. 1935; R.C.M. 1947, 93-1701-7.

Cross-References

Authentication and identification, Art. IX, M.R. Ev. (see Title 26, ch. 10).

26-1-1007 through 26-1-1010 reserved.

26-1-1011. Affidavit of printer or publisher as evidence of publication. Evidence of the publication of a document or notice required by law or by an order of a court or judge to be published in a newspaper may be given by the affidavit of the printer or publisher of the newspaper or his foreman or principal clerk, annexed to a copy of the document or notice, specifying the times when and the paper in which the publication was made.

History: En. Sec. 13, p. 12, L. 1881; re-en. Sec. 677, 1st Div. Comp. Stat. 1887; re-en. Sec. 3331, C. Civ. Proc. 1895; re-en. Sec. 7993, Rev. C. 1907; re-en. Sec. 10637, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2010; amd. Sec. 1, Ch. 80, L. 1935; re-en. Sec. 10637, R.C.M. 1935; R.C.M. 1947, 93-1701-2.

Cross-References

Affidavit of printer — allowance of claims, 18-7-204.

Printers — penalty for false affidavit or overcharge, 18-7-205.

Service by publication — publisher's affidavit, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

26-1-1012. Affidavit of publication — where filed, prima facie evidence. If such affidavit be made in an action or special proceeding pending in a court, it may be filed with the court or clerk thereof. If not so made, it may be filed with the clerk of the county where the newspaper is printed. In either case the original affidavit or a copy thereof, certified by the judge of the court or clerk having it in custody, is prima facie evidence of the facts stated therein.

History: En. Sec. 655, p. 209, L. 1877; re-en. Sec. 655, 1st Div. Rev. Stat. 1879; re-en. Sec. 676, 1st Div. Comp. Stat. 1887; re-en. Sec. 3332, C. Civ. Proc. 1895; re-en. Sec. 7994, Rev. C. 1907; re-en. Sec. 10638, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2011; re-en. Sec. 10638, R.C.M. 1935; R.C.M. 1947, 93-1701-3.

Cross-References

Clerk of Court — filing, 3-5-501.

Affidavit of printer — allowance of claims, 18-7-204.

CHAPTER 2

SUBPOENAS AND WITNESSES

Part 1 — Subpoenas

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Part 1

Subpoenas

Part Cross-References

Administrative proceedings subpoenas, 2-4-611.

Legislative subpoenas, 5-5-101.

Civil procedure — subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas for production of documentary evidence — civil procedure, Rule 45(b), M.R.Civ.P. (see Title 25, ch. 20).

Securities regulation — subpoenas, 30-10-304.

Investigative subpoenas, Title 46, ch. 4, part 3.

Grand jury — subpoenas, 46-11-313.

Criminal subpoenas, Title 46, ch. 15, part 1.

Inability to procure witness through subpoena — use of criminal depositions, 46-15-204.

26-2-101. Subpoena defined. The process by which the attendance of a witness is required is by a subpoena. It is a writ or order directed to a person and requiring his attendance at a particular time and place to testify as a witness. It may also require him to bring with him any books, documents, or other things under his control, which he is bound by law to produce in evidence.

History: **En. Sec. 380, p. 212, L. 1867; re-en. Sec. 454, p. 127, Cod. Stat. 1871; re-en. Sec. 633, p. 204, L. 1877; re-en. Sec. 633, 1st Div. Rev. Stat. 1879; re-en. Sec. 654, 1st Div. Comp. Stat. 1887; en. Sec. 3300, C. Civ. Proc. 1895; re-en. Sec. 7974, Rev. C. 1907; re-en. Sec. 10618, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1985; re-en. Sec. 10618, R.C.M. 1935; R.C.M. 1947, 93-1501-3.**

Cross-References

Civil subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Criminal subpoenas, Title 46, ch. 15, part 1.

26-2-102. Issuance of subpoena. The subpoena is issued as follows:

(1) To require attendance before a court or at the trial of an issue therein, it is issued under the seal of the court before which the attendance is required or in which the issue is pending.

(2) To require attendance out of the court before a judge, justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of this state, it is issued by the judge, justice, or other officer before whom the attendance is required.

(3) To require attendance before a commissioner appointed to take testimony by a court of a foreign country, of the United States, of any other state in the United States, or of any other district or county within this state or before any officer or officers empowered by the laws of the United States to take testimony, it may be issued by any judge or justice of the peace in places within his respective jurisdiction, with like power to enforce attendance and, upon certificate of contumacy to said court, to punish contempt of his process as such judge or justice could exercise if the subpoena directed the attendance of the witness before his court in a matter pending therein.

History: **En. Sec. 322, p. 111, Bannack Stat.; en. Sec. 381, p. 212, L. 1867; re-en. Sec. 455, p. 127, Cod. Stat. 1871; re-en. Sec. 634, p. 204, L. 1877; re-en. Sec. 634, 1st Div. Rev. Stat. 1879; re-en. Sec. 655, 1st Div. Comp. Stat. 1887; re-en. Sec. 3301, C. Civ. Proc. 1895; re-en. Sec. 7975, Rev. C. 1907; re-en. Sec. 10619, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1986; re-en. Sec. 10619, R.C.M. 1935; R.C.M. 1947, 93-1501-4.**

Cross-References

Officers taking proof of execution of instrument, 1-5-304.

Administrative proceedings, 2-4-104, 2-4-611.

Legislative Council, 5-11-107.

Civil actions — form and issuance, Rule 45(a), M.R.Civ.P. (see Title 25, ch. 20).

Subpoena for taking depositions, Rule 45(d), M.R.Civ.P. (see Title 25, ch. 20).

Contempt — failure to obey subpoena, Rule 45(f), M.R.Civ.P. (see Title 25, ch. 20).

Masters — subpoena witnesses, Rule 53(d), M.R.Civ.P. (see Title 25, ch. 20).

Grand jury — subpoena of witness, 46-11-313.

Criminal subpoena — issuance, 46-15-101.

Witnesses from another state — criminal actions, 46-15-113.

Board of Pardons — issuance and service of subpoenas, 46-23-205.

26-2-103. Service of subpoena on concealed witness. If a witness is concealed in a building or vessel so as to prevent the service of a subpoena upon him, any court or judge or any officer issuing a subpoena may, upon proof by affidavit of the concealment and of the materiality of the witness, make an order that the sheriff of the county serve the subpoena and the sheriff must serve it accordingly and, for that purpose, may break into the building or vessel where the witness is concealed.

History: En. Sec. 383, p. 212, L. 1867; re-en. Sec. 457, p. 127, Cod. Stat. 1871; re-en. Sec. 636, p. 205, L. 1877; re-en. Sec. 636, 1st Div. Rev. Stat. 1879; re-en. Sec. 657, 1st Div. Comp. Stat. 1887; re-en. Sec. 3303, C. Civ. Proc. 1895; re-en. Sec. 7977, Rev. C. 1907; re-en. Sec. 10621, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1988; re-en. Sec. 10621, R.C.M. 1935; R.C.M. 1947, 93-1501-6.

Cross-References

Contempt of court, Title 3, ch. 1, part 5; Rule 45(f), M.R.Civ.P. (see Title 25, ch. 20).

Service of civil subpoenas, Rule 45(c), M.R.Civ.P. (see Title 25, ch. 20).

Service of criminal subpoenas, 46-15-102.

26-2-104. Disobedience — how punished. Disobedience to a subpoena or a refusal to be sworn or to answer as a witness or to subscribe an affidavit or deposition, when required, may be punished as a contempt by the court issuing the subpoena or requiring the witness to be so sworn, to so answer, or to so subscribe; and if the witness be a party, his complaint or answer may be stricken out.

History: En. Sec. 329, p. 112, Bannack Stat.; amd. Sec. 387, p. 213, L. 1867; re-en. Sec. 461, p. 128, Cod. Stat. 1871; re-en. Sec. 640, p. 206, L. 1877; re-en. Sec. 640, 1st Div. Rev. Stat. 1879; re-en. Sec. 661, 1st Div. Comp. Stat. 1887; re-en. Sec. 3306, C. Civ. Proc. 1895; re-en. Sec. 7980, Rev. C. 1907; re-en. Sec. 10624, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1991; re-en. Sec. 10624, R.C.M. 1935; R.C.M. 1947, 93-1501-9; amd. Sec. 17, Ch. 72, L. 1983.

Cross-References

Contempt of court, Title 3, ch. 7, part 5.

Legislative contempt, 5-5-103.

Motion to strike pleadings, Rule 12(f), M.R.Civ.P. (see Title 25, ch. 20).

Contempt — failure to obey subpoena, Rule 45(f), M.R.Civ.P. (see Title 25, ch. 20).

Board of Pardons subpoena — penalty for disobedience, 46-23-207.

26-2-105. Disobedience — civil damages. A witness disobeying a subpoena also forfeits to the party aggrieved the sum of $100 and all damages which he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered in a civil action.

History: En. Sec. 330, p. 112, Bannack Stat.; re-en. Sec. 388, p. 213, L. 1867; re-en. Sec. 462, p. 128, Cod. Stat. 1871; re-en. Sec. 641, p. 206, L. 1877; re-en. Sec. 641, 1st Div. Rev. Stat. 1879; re-en. Sec. 662, 1st Div. Comp. Stat. 1887; re-en. Sec. 3307, C. Civ. Proc. 1895; re-en. Sec. 7981, Rev. C. 1907; re-en. Sec. 10625, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1992; re-en. Sec. 10625, R.C.M. 1935; R.C.M. 1947, 93-1501-10.

Cross-References

Measure of damages for misconduct, 3-1-521.

Contempt — failure to obey subpoena, Rule 45(f), M.R.Civ.P. (see Title 25, ch. 20).

26-2-106. Warrant to arrest and bring in disobedient witness. In case of a failure of a witness to attend, the court or officer issuing the subpoena, upon proof of the service thereof and of the failure of the witness, may issue a warrant to the sheriff of the county to arrest the witness and bring him before the court or officer where his attendance was required.

History: En. Sec. 331, p. 112, Bannack Stat.; amd. Sec. 389, p. 213, L. 1867; re-en. Sec. 463, p. 128, Cod. Stat. 1871; re-en. Sec. 642, p. 207, L. 1877; re-en. Sec. 642, 1st Div. Rev. Stat. 1879; re-en. Sec. 663, 1st Div. Comp. Stat. 1887; re-en. Sec. 3308, C. Civ. Proc. 1895; re-en. Sec. 7982, Rev. C. 1907; re-en. Sec. 10626, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1993; re-en. Sec. 10626, R.C.M. 1935; R.C.M. 1947, 93-1501-11.

Cross-References

Detention, Art. II, sec. 23, Mont. Const.

Contempt — warrant of attachment or commitment, 3-1-513.

Contempt — arrest and detention by Sheriff, 3-1-515, 3-1-521.

Legislature — compelling attendance, 5-5-104.

26-2-107. Contents of warrant — execution. Every warrant of commitment issued by a court or officer pursuant to this part must specify therein, particularly, the cause of the commitment; and if it be for refusing to answer a question, such question must be stated in the warrant. Every warrant to arrest or commit a witness pursuant to this part must be directed to the sheriff of the county where the witness may be and must be executed by him in the same manner as process by the district court.

History: En. Sec. 643, p. 207, L. 1877; re-en. Sec. 643, 1st Div. Rev. Stat. 1879; re-en. Sec. 664, 1st Div. Comp. Stat. 1887; re-en. Sec. 3309, C. Civ. Proc. 1895; re-en. Sec. 7983, Rev. C. 1907; re-en. Sec. 10627, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1994; re-en. Sec. 10627, R.C.M. 1935; R.C.M. 1947, 93-1501-12.

Cross-References

Execution of process in District Court, Title 25, ch. 3.

Part 2

Securing Testimony of Witness Who Is a Prisoner

Part Cross-References

Criminal subpoena — persons imprisoned in state prison or in another county, 46-15-105.

26-2-201. Court order to obtain deposition or attendance of prisoner. If the witness be a prisoner confined in a jail or prison within this state, an order for his examination in the prison upon deposition or for his temporary removal and production before a court or officer for the purpose of being orally examined may be made as follows:

(1) by the court itself in which the action or special proceeding is pending unless it be a justice's court;

(2) by a justice of the supreme court or a judge of the district court of the county where the action or proceeding is pending if pending before a justice's court or before a judge or other person out of court.

History: En. Sec. 332, p. 112, Bannack Stat.; re-en. Sec. 390, p. 213, L. 1867; re-en. Sec. 464, p. 128, Cod. Stat. 1871; re-en. Sec. 644, p. 207, L. 1877; re-en. Sec. 644, 1st Div. Rev. Stat. 1879; re-en. Sec. 665, 1st Div. Comp. Stat. 1887; amd. Sec. 3310, C. Civ. Proc. 1895; re-en. Sec. 7984, Rev. C. 1907; re-en. Sec. 10628, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1995; re-en. Sec. 10628, R.C.M. 1935; R.C.M. 1947, 93-1501-13.

Cross-References

Detention, Art. II, sec. 23, Mont. Const.

Depositions — civil proceedings, Rules 27 through 32, M.R.Civ.P. (see Title 25, ch. 20).

Depositions — criminal proceedings, Title 46, ch. 15, part 2.

26-2-202. Motion and affidavit required. Such order can only be made on the motion of a party, upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

History: En. Sec. 333, p. 113, Bannack Stat.; re-en. Sec. 391, p. 213, L. 1867; re-en. Sec. 465, p. 128, Cod. Stat. 1871; re-en. Sec. 645, p. 207, L. 1877; re-en. Sec. 645, 1st Div. Rev. Stat. 1879; re-en. Sec. 666, 1st Div. Comp. Stat. 1887; re-en. Sec. 3311, C. Civ. Proc. 1895; re-en. Sec. 7985, Rev. C. 1907; re-en. Sec. 10629, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1996; re-en. Sec. 10629, R.C.M. 1935; R.C.M. 1947, 93-1501-14.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

26-2-203. When production of witness may be required. If the witness be imprisoned in the county where the action or proceeding is pending, his production may be required. In all other cases his examination, when allowed, must be taken upon deposition.

History: **En. Sec. 334, p. 113, Bannack Stat.; re-en. Sec. 392, p. 213, L. 1867; re-en. Sec. 466, p. 129, Cod. Stat. 1871; re-en. Sec. 646, p. 207, L. 1877; re-en. Sec. 646, 1st Div. Rev. Stat. 1879; re-en. Sec. 667, 1st Div. Comp. Stat. 1887; re-en. Sec. 3312, C. Civ. Proc. 1895; re-en. Sec. 7986, Rev. C. 1907; re-en. Sec. 10630, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1997; re-en. Sec. 10630, R.C.M. 1935; R.C.M. 1947, 93-1501-15.**

Cross-References

Detention, Art. II, sec. 23, Mont. Const.

Depositions — civil, Rule 27, M.R.Civ.P. (see Title 25, ch. 20).

Depositions — criminal, Title 46, ch. 15, part 2.

Part 3

Duties of Witnesses

Part Cross-References

Witnesses — generally, Art. VI, Rules 601 through 613, M.R.Ev. (see Title 26, ch. 10).

Tampering with witnesses, 45-7-206.

Criminal actions — ensuring availability of material witness — preserving testimony, 46-11-601.

26-2-301. Witness required to attend when subpoenaed. A witness served with a subpoena must attend at the time appointed, with any papers under his control required by the subpoena, and answer all pertinent and legal questions and, unless sooner discharged, must remain until the testimony is closed.

History: **En. Sec. 327, p. 112, Bannack Stat.; re-en. Sec. 385, p. 213, L. 1867; re-en. Sec. 459, p. 128, Cod. Stat. 1871; re-en. Sec. 638, p. 206, L. 1877; re-en. Sec. 638, 1st Div. Rev. Stat. 1879; re-en. Sec. 659, 1st Div. Comp. Stat. 1887; amd. Sec. 3400, C. Civ. Proc. 1895; re-en. Sec. 8029, Rev. C. 1907; re-en. Sec. 10673, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2064; re-en. Sec. 10673, R.C.M. 1935; R.C.M. 1947, 93-2101-1.**

Cross-References

Exclusion of witness — others testifying, 3-1-313.

Production of documents and things, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

26-2-302. Witness required to answer questions. A witness must answer questions legal and pertinent to the matter in issue though his answer may establish a claim against himself, but he need not give an answer which will have a tendency to subject him to punishment for a felony, nor need he give an answer which will have a direct tendency to degrade his character unless it be to the very fact in issue or to a fact from which the fact in issue would be presumed.

History: **En. Sec. 328, p. 112, Bannack Stat.; re-en. Sec. 386, p. 213, L. 1867; re-en. Sec. 460, p. 128, Cod. Stat. 1871; re-en. Sec. 639, p. 206, L. 1877; re-en. Sec. 639, 1st Div. Rev. Stat. 1879; re-en. Sec. 660, 1st Div. Comp. Stat. 1887; amd. Sec. 3401, C. Civ. Proc. 1895; re-en. Sec. 8030, Rev. C. 1907; re-en. Sec. 10674, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2065; re-en. Sec. 10674, R.C.M 1935; R.C.M. 1947, 93-2101-2; amd. Sec. 18, Ch. 72, L. 1983.**

Cross-References

Right against self-incrimination, Art. II, sec. 25, Mont. Const.

Refusal to testify — contempt:
  - Administrative proceedings, 2-4-104.
  - Defined as contemptuous, 3-1-501.
  - Justices' Courts, 3-10-401.
  - City Courts, 3-11-303.
  - Before Legislature, 5-5-103.
  - Legislative Council, 5-11-107.
  - Criminal contempt, 45-7-309.

Gambling — immunity for testimony, 23-5-141.

Civil execution of judgment — location of property — answer required, 25-14-101.

Impeachment by evidence of conviction of crime — not admissible, Rule 609, M.R.Ev. (see Title 26, ch. 10).

Perjury, 45-7-201.

False swearing, 45-7-202.

Compelling testimony of witness — immunity:

- Securities regulation, 30-10-303, 30-14-221.
- Investigative subpoenas, 46-4-305.
- Judicial proceedings, 46-15-331.

26-2-303. Person present required to testify. A person present in court or before a judicial officer may be required to testify in the same manner as if he were in attendance upon a subpoena issued by such court or officer.

History: En. Sec. 326, p. 112, Bannack Stat.; re-en. Sec. 384, p. 212, L. 1867; re-en. Sec. 458, p. 128, Cod. Stat. 1871; re-en. Sec. 637, p. 206, L. 1877; re-en. Sec. 637, 1st Div. Rev. Stat. 1879; re-en. Sec. 658, 1st Div. Comp. Stat. 1887; re-en. Sec. 3305, C. Civ. Proc. 1895; re-en. Sec. 7979, Rev. C. 1907; re-en. Sec. 10623, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1990; re-en. Sec. 10623, R.C.M. 1935; R.C.M. 1947, 93-1501-8.

Part 4

Protection of Witnesses

26-2-401. Right of witness to protection from harassment. It is the right of a witness to be protected from irrelevant, improper, or insulting questions and from harsh or insulting demeanor; to be detained only so long as the interests of justice require it; to be examined only as to matters legal and pertinent to the issue.

History: En. Sec. 3402, C. Civ. Proc. 1895; re-en. Sec. 8031, Rev. C. 1907; re-en. Sec. 10675, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2066; re-en. Sec. 10675, R.C.M. 1935; R.C.M. 1947, 93-2101-3.

Cross-References

Evidence of character and conduct of witnesses, Rule 608, M.R.Ev. (see Title 26, ch. 10).

Detaining witnesses — criminal — material witness, 46-11-601.

Compelling testimony of witness — criminal, 46-15-331.

26-2-402. Witness protected from arrest when attending, going, and returning. Every person who has been, in good faith, served with a subpoena to attend as a witness before a court, judge, commissioner, referee, or other person in a case where the disobedience of the witness may be punished as a contempt is exonerated from arrests in a civil action while going to the place of attendance, necessarily remaining there, and returning therefrom.

History: En. Sec. 335, p. 113, Bannack Stat.; amd. Sec. 393, p. 213, L. 1867; re-en. Sec. 467, p. 129, Cod. Stat. 1871; re-en. Sec. 674, p. 215, L. 1877; re-en. Sec. 3403, C. Civ. Proc. 1895; re-en. Sec. 8032, Rev. C. 1907; re-en. Sec. 10676, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2067; re-en. Sec. 10676, R.C.M. 1935; R.C.M. 1947, 93-2101-4.

Cross-References

Persons exempt from arrest, 46-6-102.

Criminal subpoena — exemption from arrest — person from out-of-state, 46-15-114.

26-2-403. Arrest void — punishment and liability. The arrest of a witness contrary to 26-2-402 is void and, when willfully made, is a contempt of the court; and the person making it is responsible to the witness arrested for double the amount of the damages which may be assessed against him and is also liable to an action at the suit of the party serving the witness with a subpoena for the damages sustained by him in consequence of the arrest.

History: **En. Sec. 3404, C. Civ. Proc. 1895; re-en. Sec. 8033, Rev. C. 1907; re-en. Sec. 10677, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2068; re-en. Sec. 10677, R.C.M. 1935; R.C.M. 1947, 93-2101-5.**

Cross-References
Contempt of court, Title 3, ch. 1, part 5.
Measure of damages, Title 27, ch. 1, part 3.
Liability, Title 27, ch. 1, part 7.

26-2-404. Affidavit of arrested witness — exoneration of arresting officer. (1) An officer is not liable for making the arrest in ignorance of the facts creating the exoneration but is liable for any subsequent detention of the witness if such witness claims the exemption and makes an affidavit stating that:

(a) he has been served with a subpoena to attend as a witness before a court, officer, or other person, specifying the same, the place of attendance, and the action or proceeding in which the subpoena was issued;

(b) he has not thus been served by his own procurement with the intention of avoiding arrest; and

(c) he is at the time going to the place of attendance, returning therefrom, or remaining there in obedience to the subpoena.

(2) The affidavit may be taken by the officer and exonerates him from liability for discharging the witness when arrested.

History: **En. Sec. 394, p. 214, L. 1867; re-en. Sec. 468, p. 129, Cod. Stat. 1871; rep. Sec. 674, p. 215, L. 1877; re-en. Sec. 3405, C. Civ. Proc. 1895; re-en. Sec. 8034, Rev. C. 1907; re-en. Sec. 10678, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2069; re-en. Sec. 10678, R.C.M. 1935; R.C.M. 1947, 93-2101-6; amd. Sec. 19, Ch. 72, L. 1983.**

Cross-References
Affidavits, Title 26, ch. 1, part 10.
Subpoenas, Title 26, ch. 2, part 1.
Unlawful restraint, 45-5-301.
Arrest by a peace officer, Title 46, ch. 6, part 4.

26-2-405. Discharge of witness from arrest by court or judge. The court or officer issuing the subpoena and the court or officer before whom the attendance is required may discharge the witness from an arrest made in violation of 26-2-402. If the court has adjourned before the arrest or before application for discharge, a judge of the court may grant the discharge.

History: **En. Sec. 3406, C. Civ. Proc. 1895; re-en. Sec. 8035, Rev. C. 1907; re-en. Sec. 10679, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2070; re-en. Sec. 10679, R.C.M. 1935; R.C.M. 1947, 93-2101-7.**

Cross-References
Subpoena for attendance of witness, Rule 45(a), M.R.Civ.P. (see Title 25, ch. 20).
Subpoenas, Title 26, ch. 2, part 1.

Part 5

Witness Fees

26-2-501. Witnesses in courts of record and before certain court officers. (1) Witness fees are as follows:

(a) for attending in any civil or criminal action or proceeding before any court of record, referee, or officer authorized to take depositions or commissioners to assess damages or otherwise, for each day, $10;

(b) for mileage in traveling to the place of trial or hearing, each way, for each mile, a mileage allowance as provided in 2-18-503.

(2) However, no officer of the United States, the state of Montana, or any county, incorporated city, or town within the limits of the state of Montana shall receive any per diem when testifying in a criminal proceeding, and no witness shall receive fees in any more than one criminal case on the same day.

History: En. Sec. 4648, Pol. C. 1895; re-en. Sec. 3182, Rev. C. 1907; re-en. Sec. 4936, R.C.M. 1921; amd. Sec. 2, Ch. 18, L. 1935; re-en. Sec. 4936, R.C.M. 1935; amd. Sec. 2, Ch. 117, L. 1963; amd. Sec. 3, Ch. 332, L. 1971; amd. Sec. 11, Ch. 439, L. 1975; R.C.M. 1947, 25-404.

Cross-References

Costs generally allowable, 25-10-201.

Costs of securing witnesses, 25-10-205.

Expenses of grand jury, 46-11-319.

26-2-502. Witnesses in courts not of record — civil actions. Witnesses in courts not of record in civil actions and proceedings shall receive $10 for each day's actual attendance and mileage as provided in 2-18-503 for each mile actually traveled in going from their residences by the usual traveled route to the court and return.

History: En. Sec. 3, Ch. 48, L. 1903; re-en. Sec. 3186, Rev. C. 1907; re-en. Sec. 4941, R.C.M. 1921; amd. Sec. 3, Ch. 18, L. 1935; re-en. Sec. 4941, R.C.M. 1935; amd. Sec. 4, Ch. 332, L. 1971; amd. Sec. 7, Ch. 420, L. 1975; R.C.M. 1947, 25-409; amd. Sec. 2, Ch. 334, L. 1985.

Cross-References

Courts of record, 3-1-102.

26-2-503. Witnesses in courts not of record — criminal actions and on coroner's inquests. Witnesses in courts not of record in criminal actions and on coroner's inquests shall receive $10 per day for actual attendance and mileage as provided in 2-18-503 for each mile actually and necessarily traveled from their places of residence to the court and return.

History: En. Sec. 4, Ch. 48, L. 1903; re-en. Sec. 3187, Rev. C. 1907; re-en. Sec. 4942, R.C.M. 1921; amd. Sec. 4, Ch. 18, L. 1935; re-en. Sec. 4942, R.C.M. 1935; amd. Sec. 5, Ch. 332, L. 1971; amd. Sec. 8, Ch. 420, L. 1975; R.C.M. 1947, 25-410; amd. Sec. 3, Ch. 334, L. 1985.

Cross-References

Payment of costs of inquest, 7-4-2913.

Courts of record, 26-2-503.

Coroner's inquests, Title 46, ch. 4, part 2.

26-2-504. Interpreters to be paid as witnesses. Interpreters and translators must receive the same fees as witnesses.

History: En. Sec. 4657, Pol. C. 1895; re-en. Sec. 3191, Rev. C. 1907; re-en. Sec. 4946, R.C.M. 1921; re-en. Sec. 4946, R.C.M. 1935; R.C.M. 1947, 25-413.

Cross-References

English language — judicial proceedings, 3-1-314.

Interpreters, Rule 604, M.R.Ev. (see Title 26, ch. 10).

Interpreters for the deaf — compensation, 49-4-509.

26-2-505. Expert witnesses. An expert is a witness and receives the same compensation as a witness.

History: En. Sec. 4658, Pol. C. 1895; re-en. Sec. 3192, Rev. C. 1907; re-en. Sec. 4947, R.C.M. 1921; re-en. Sec. 4947, R.C.M. 1935; R.C.M. 1947, 25-414.

Cross-References

Testimony of experts, Rule 702, M.R.Ev. (see Title 26, ch. 10).

26-2-506. Fees paid by party subpoenaing in civil actions. The fees and compensation of a witness in all civil actions must be paid by the party who caused him to be subpoenaed.

History: En. Sec. 4654, Pol. C. 1895; re-en. Sec. 3188, Rev. C. 1907; re-en. Sec. 4943, R.C.M. 1921; re-en. Sec. 4943, R.C.M. 1935; R.C.M. 1947, 25-411.

Cross-References

Witness fees — allowable cost, 25-10-201.

Subpoena for attendance of witness, Rule 45(a), M.R.Civ.P. (see Title 25, ch. 20).

26-2-507. Demand for advance payment of witness fees in civil action. No witness shall be obliged to attend court or before a referee, officer authorized to take depositions, or commissioner, when subpoenaed, unless his mileage and fees for 1 day's attendance are tendered or paid to him on his demanding the same or unless his fees for attendance thereafter for each day are tendered or paid to him on demand. The fees of witnesses paid may be taxed as costs against the losing party.

History: En. Sec. 4655, Pol. C. 1895; re-en. Sec. 3189, Rev. C. 1907; re-en. Sec. 4944, R.C.M. 1921; amd. Sec. 1, Ch. 71, L. 1927; re-en. Sec. 4944, R.C.M. 1935; R.C.M. 1947, 25-412.

Cross-References

Witness fees — allowable cost, 25-10-201.

26-2-508. Witnesses on behalf of state or county — advance payment not required. The attorney general or any county attorney is authorized to cause subpoenas to be issued and compel the attendance of witnesses on behalf of the state or county without paying or tendering fees in advance to either officers or witnesses; and any witness refusing to or failing to attend, after being served with a subpoena, may be proceeded against and is liable in the same manner as is provided by law in other cases where fees have been tendered or paid.

History: En. Sec. 4620, Pol. C. 1895; re-en. Sec. 3153, Rev. C. 1907; re-en. Sec. 4902, R.C.M. 1921; re-en. Sec. 4902, R.C.M. 1935; R.C.M. 1947, 25-218.

Cross-References

Duties of Attorney General, 2-18-501.

County Attorney — duties, 7-4-2711, 7-4-2716.

Failure of witness to attend, 26-2-104.

26-2-509. Certificate of clerk to witness to obtain payment. The clerk of any court before which any witness shall have attended on behalf of the state or county in any civil action must give to such witness a certificate under seal of travel and attendance, which shall entitle him to receive the amount therein stated from the state or county treasurer.

History: En. Sec. 4621, Pol. C. 1895; re-en. Sec. 3154, Rev. C. 1907; re-en. Sec. 4903, R.C.M. 1921; re-en. Sec. 4903, R.C.M. 1935; R.C.M. 1947, 25-219.

Cross-References

Clerk of Court — duties relating to witnesses, 3-5-510 through 3-5-512.

26-2-510. Application of sections exempting from advance payment. The provisions of 26-2-508 and 26-2-509 shall extend to all actions and proceedings brought in the name of the attorney general or any other person or persons for the benefit of the state or county.

History: En. Sec. 4622, Pol. C. 1895; re-en. Sec. 3155, Rev. C. 1907; re-en. Sec. 4904, R.C.M. 1921; re-en. Sec. 4904, R.C.M. 1935; R.C.M. 1947, 25-220.

Cross-References

Duties of Attorney General, 2-18-501.

Proceedings for the benefit of state, Rule 17(a), M.R.Civ.P. (see Title 25, ch. 20).

CHAPTER 3

EFFECT OF FORMER JUDGMENTS AND ORDERS

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26-3-201. Effect of judgment or final order — when conclusive.
26-3-202. Effect of other judicial orders — when disputable presumption created.
26-3-203. Effect of judicial record of another state.
26-3-204. Effect of judicial record of foreign court of admiralty.
26-3-205. Effect of judgments of other foreign tribunals.

Chapter Cross-References

Prohibition against double jeopardy, Art. II, sec. 25, Mont. Const.

Judgments — generally, Title 25, ch. 9.

Effect of former criminal prosecutions, Title 46, ch. 11, part 5.

Part 1

General Provisions

26-3-101. Kinds of jurisdiction necessary to sustain a record. The jurisdiction sufficient to sustain a record is jurisdiction over the cause, over the parties, and over the thing, when a specific thing is the subject of the judgment.

History: En. Sec. 3205, C. Civ. Proc. 1895; re-en. Sec. 7923, Rev. C. 1907; re-en. Sec. 10567, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1917; re-en. Sec. 10567, R.C.M. 1935; R.C.M. 1947, 93-1001-29.

Cross-References

Sovereignty and jurisdiction of the state, Title 2, ch. 1, part 1.

Territorial limits on jurisdiction, Title 2, ch. 1, part 2.

Jurisdiction:
  Supreme Court, Title 3, ch. 2, part 2.
  District Court, 3-5-302.
  Municipal Court, 3-6-103.
  Justice's Court, 3-10-303.
  Water Court, 3-7-502.
  City Courts, 3-11-102, 3-11-103.

Persons subject to jurisdiction — civil procedure, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

26-3-102. What considered adjudged in a judgment. That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged or which was actually and necessarily included therein or necessary thereto.

History: En. Sec. 3199, C. Civ. Proc. 1895; re-en. Sec. 7917, Rev. C. 1907; re-en. Sec. 10561, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1911; re-en. Sec. 10561, R.C.M. 1935; R.C.M. 1947, 93-1001-23.

Cross-References
Apparent nonexistence, 1-3-221.
Contents of judgment, Title 25, ch. 9, part 2.

26-3-103. When parties are considered to be the same. The parties are deemed to be the same when those between whom the evidence is offered were on opposite sides in the former case and a judgment or other determination could in that case have been made between them alone, though other parties were joined with both or either.

History: En. Sec. 3198, C. Civ. Proc. 1895; re-en. Sec. 7916, Rev. C. 1907; re-en. Sec. 10560, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1910; re-en. Sec. 10560, R.C.M. 1935; R.C.M. 1947, 93-1001-22.

Cross-References
Parties, Title 25, ch. 5.
Necessary joinder of parties, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

26-3-104. Principal bound when surety bound. Whenever, pursuant to 26-3-102, 26-3-103, 26-3-201, and 26-3-202, a party is bound by a record and such party stands in the relation of a surety for another, the latter is also bound from the time that he has notice of the action or proceeding and an opportunity at the surety's request to join in the defense.

History: En. Sec. 3200, C. Civ. Proc. 1895; re-en. Sec. 7918, Rev. C. 1907; re-en. Sec. 10562, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1912; re-en. Sec. 10562, R.C.M. 1935; R.C.M. 1947, 93-1001-24.

Cross-References
Suretyship, Title 28, ch. 11, part 4.

26-3-105. Impeachment of a judicial record. Any judicial record may be impeached by evidence of a want of jurisdiction in the court or judicial officer, of collusion between the parties, or of fraud in the party offering the record in respect to the proceedings.

History: En. Sec. 3204, C. Civ. Proc. 1895; re-en. Sec. 7922, Rev. C. 1907; re-en. Sec. 10566, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1916; re-en. Sec. 10566, R.C.M. 1935; R.C.M. 1947, 93-1001-28.

Cross-References
Conclusive presumptions — conclusive judgment or order of court, 26-1-601.
Disputable presumption — judicial records, 26-1-602.
Self-authentication of record, Rule 902, M.R.Ev. (see Title 26, ch. 10).
Fraud, 28-2-404 through 28-2-406.

Part 2

Effect of Specific Kinds of Judicial Records

Part Cross-References
Prohibition against double jeopardy, Art. II, sec. 25, Mont. Const.
Child support order — Revised Uniform Reciprocal Enforcement of Support Act — evidence of duty to support, 40-5-124.
Criminal offense not merged into criminal offense — separate actions, 45-1-104.

26-3-201. Effect of judgment or final order — when conclusive. The effect of a judgment or final order in an action or special proceeding before a court or judge of this state or of the United States having jurisdiction to pronounce the judgment or order is as follows:

(1) In case of a judgment or order against a specific thing, or in respect to the probate of a will or the administration of the estate of a decedent, or

in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title to the thing, the will or administration, or the condition or relation of the person.

(2) In other cases, the judgment or order is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity, provided they have notice, actual or constructive, of the pendency of the action or proceeding.

History: En. Sec. 3196, C. Civ. Proc. 1895; re-en. Sec. 7914, Rev. C. 1907; re-en. Sec. 10558, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1908; re-en. Sec. 10558, R.C.M. 1935; R.C.M. 1947, 93-1001-20.

Cross-References

Full faith and credit — judicial proceedings of another state, Art. IV, sec. 1, U.S. Const. (see annotations vol. 1, Federal Materials).

Judgment, Title 25, ch. 9.

Pleading a judgment, Rule 9(e), M.R.Civ.P. (see Title 25, ch. 20).

Conclusive presumption — conclusive judgment or order, 26-1-601.

Self-authentication of judicial record, Rule 902, M.R.Ev. (see Title 26, ch. 10).

Uniform Probate Code, Title 72, ch. 1 through 5.

26-3-202. Effect of other judicial orders — when disputable presumption created. Other judicial orders of a court or judge of this state or of the United States create a disputable presumption, according to the matter directly determined, between the same parties and their representatives and successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity.

History: En. Sec. 3197, C. Civ. Proc. 1895; re-en. Sec. 7915, Rev. C. 1907; re-en. Sec. 10559, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1909; re-en. Sec. 10559, R.C.M. 1935; R.C.M. 1947, 93-1001-21.

Cross-References

Full faith and credit — judicial proceedings of other states, Art. IV, sec. 1, U.S. Const. (see annotations vol. 1, Federal Materials).

Disputable presumptions, 26-1-602.

Self-authenticating record, Rule 902, M.R.Ev. (see Title 26, ch. 10).

26-3-203. Effect of judicial record of another state. The effect of a judicial record of a sister state is the same in this state as in the state where it was made, except that it can only be enforced here by an action or special proceeding and except that the authority of a guardian or committee or of an executor or administrator does not extend beyond the jurisdiction of the government under which he was invested with his authority.

History: En. Sec. 3201, C. Civ. Proc. 1895; re-en. Sec. 7919, Rev. C. 1907; re-en. Sec. 10563, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1913; re-en. Sec. 10563, R.C.M. 1935; R.C.M. 1947, 93-1001-25.

Cross-References

Full faith and credit — judicial proceedings of other states, Art. IV, sec. 1, U.S. Const. (see annotations vol. 1, Federal Materials).

Self-authenticating records, Rule 902, M.R.Ev. (see Title 26, ch. 10).

Personal representatives — foreign — jurisdiction, 72-3-506.

Guardianship of minor — foreign testamentary appointment, 72-5-212.

Guardians of incapacitated persons — court of residence and court of appointment, 72-5-322.

26-3-204. Effect of judicial record of foreign court of admiralty. The effect of the judicial record of a court of admiralty of a foreign country is the same as if it were the record of a court of admiralty of the United States.

History: **En. Sec. 3202, C. Civ. Proc. 1895; re-en. Sec. 7920, Rev. C. 1907; re-en. Sec. 10564, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1914; re-en. Sec. 10564, R.C.M. 1935; R.C.M. 1947, 93-1001-26.**

Cross-References

U.S. Court of Admiralty, Art. III, sec. 2, U.S. Const. (see annotations vol. 1, Federal Materials).

26-3-205. Effect of judgments of other foreign tribunals. The effect of the judgment of any other tribunal of a foreign country having jurisdiction to pronounce the judgment is as follows:

(1) In case of a judgment against a specific thing, the judgment is conclusive upon the title to the thing.

(2) In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title and can only be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

History: **En. Sec. 3203, C. Civ. Proc. 1895; re-en. Sec. 7921, Rev. C. 1907; re-en. Sec. 10565, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1915; re-en. Sec. 10565, R.C.M. 1935; R.C.M. 1947, 93-1001-27.**

Cross-References

Conclusive presumptions — conclusive judgment or order, 26-1-601.

Disputable presumptions — nonconclusive judicial record, 26-1-602.

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Criminal appeals — record to contain evidence, Title 46, ch. 20, part 3.

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Crime victims compensation — rules not applicable to contested case, 53-9-131.

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Article I

General Provisions

Rule 100. Short title.

These rules may be known and cited as the Montana Rules of Evidence.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 101. Scope.

(a) Proceedings generally. These rules govern all proceedings in all courts in the state of Montana with the exceptions stated in this rule.

(b) Rules of privilege. The rules with respect to privileges found in Article V apply at all stages of all actions, cases and proceedings.

(c) Rules inapplicable. The rules (other than those with respect to privileges) do not apply in the following situations:

(1) Preliminary questions of fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).

(2) Grand jury. Proceedings before grand juries.

(3) Miscellaneous proceedings. Proceedings for extradition or rendition; preliminary examinations and proceedings on applications for leave to file informations in criminal cases; sentencing; dispositional hearings in youth court proceedings; granting or revoking probation or parole; issuance of warrants for arrest, criminal summonses and notices to appear, and search warrants; and proceedings with respect to release on bail or otherwise.

(4) Summary proceedings. Proceedings, other than motions for summary judgment, where the court is authorized by law to act summarily.

(5) Other miscellaneous proceedings. Ex parte matters; and proceedings, when authorized by law, which are uncontested or nonadversary.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Courts of the state of Montana, 3-1-101.
Summary proceeding — contempt, 3-1-511.
Youth Court dispositional hearings, 41-5-522.
Search warrants, 46-5-202.
Warrants for arrest — issuance, 46-6-201.
Criminal summons, 46-6-301.
Criminal notices to appear, 46-6-404.
Release on bail, 46-9-301.
Leave to file information, 46-11-201.
Grand jury, Title 46, ch. 11, part 3.
Sentencing, 46-18-113.
Probation and parole — granting or rejecting, 46-18-201, 46-23-202.
Extradition proceedings, 46-30-212.

Rule 102. Purpose and construction.

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 103. Rulings on evidence.

(a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

(b) Record of offer and ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) Hearing of the jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(d) Plain error. Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Grounds for new trial — evidentiary considerations, 25-11-102.

Record of excluded evidence — offer of proof, Rule 43(c), M.R.Civ.P. (see Title 25, ch. 20).

Lack of opportunity to object — civil procedure, Rule 46, M.R.Civ.P. (see Title 25, ch. 20).

Masters — may rule on evidence, Rule 53(c), M.R.Civ.P. (see Title 25, ch. 20).

New trial — harmless error in admitting evidence, Rule 61, M.R.Civ.P. (see Title 25, ch. 20).

Record on appeal, Rule 9, M.R.App.P. (see Title 25, ch. 21).

Appeals — rulings against respondent, Rule 14, M.R.App.P. (see Title 25, ch. 21).

Question of law — admission of evidence, 26-1-201.

Exemplary or punitive damages — limit on evidence regarding defendant's financial affairs or net worth, 27-1-221.

Criminal depositions — objections to receiving in evidence, 46-15-204.

Criminal appeals — affecting substantial rights, 46-20-701(2).

Rule 104. Preliminary questions of admissibility.

(a) Questions of admissibility generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court. In making its determination it is not bound by the rules of evidence except those with respect to privileges.

(b) Admissibility subject to a condition. Except as otherwise provided by law, when the admissibility of evidence depends upon proof of other connecting facts, the court may admit such evidence subject to the condition that further evidence be introduced sufficient to support a finding of those connecting facts. The order of proof may be regulated by the sound discretion of the court.

(c) Hearing of jury. Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused is a witness, if he so requests.

(d) Testimony by accused. The accused does not, by testifying upon a preliminary matter, subject himself to cross-examination as to other issues in the case.

(e) Weight and credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Construction of instruments, Title 1, ch. 4, part 1.

Interpretation of instruments — admissibility of usage, 1-4-109.

Administrative Rules of Montana — intent of Legislature — poll, 2-4-404, 5-18-110.

Question of law — decided by court, 25-7-102, 26-1-201.

Allegations — general rules of pleading, Rule 8, M.R.Civ.P. (see Title 25, ch. 20).

Depositions — objections on admissibility, Rule 32(b), M.R.Civ.P. (see Title 25, ch. 20).

Weight and credibility — jury to judge, 26-1-203, 26-1-302.

Relevancy of evidence, Rule 401, M.R.Ev. (see Title 26, ch. 10).

Privileges, Art. VI, M.R.Ev. (see Title 26, ch. 10).

Exemplary or punitive damages — limit on evidence regarding defendant's financial affairs or net worth, 27-1-221.

Parol evidence rule — written contracts, 28-2-905, 28-3-402.

Inadmissibility of results of polygraph, 37-62-302.

Crime of sexual intercourse without consent — evidence of sexual conduct of victim, 45-5-503.

Houses of prostitution — additional types of evidence admissible, 45-5-604.

Endangering welfare of children — additional types of evidence admissible, 45-5-622.

Admissibility of confessions, 46-13-301.

Criminal actions — motion to suppress evidence — exclusionary rule, 46-13-302.

Mental condition — admissible on issue of criminal intent, 46-14-102.

Motor vehicle accident reports — confidential — not admissible, 61-7-114.

Rule 105. Limited admissibility.

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.**

Cross-References

Jury instructions — civil, 25-7-301; Rule 51, M.R.Civ.P. (see Title 25, ch. 20).

Who to judge effect or value of evidence, 26-1-203.

Jury instructions — criminal, 46-16-401.

Rule 106. Remainder of or related acts, writings, or statements.

(a) When part of an act, declaration, conversation, writing or recorded statement or series thereof is introduced by a party:

(1) an adverse party may require him at that time to introduce any other part of such item or series thereof which ought in fairness to be considered at that time; or

(2) an adverse party may inquire into or introduce any other part of such item of evidence or series thereof.

(b) This rule does not limit the right of any party to cross-examine or further develop as part of his case matters covered by this rule.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.**

Cross-References

Declaration, act, or omission which is a part of the transaction, 26-1-103.

Criminal depositions — part entered — offer of other parts, 46-15-204.

Article II

Judicial Notice

Rule 201. Judicial notice of facts.

(a) Scope of rule. This rule governs judicial notice of all facts.

(b) Kinds of facts. A fact to be judicially noticed must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned.

(c) When discretionary. A court may take judicial notice, whether requested or not.

(d) When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing the jury. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

State Tax Appeal Board seal — judicial notice, 15-2-106.

Jury to judge effect or value of evidence — except conclusive evidence, 26-1-203.

Hearsay — effect, Rule 803, M.R.Ev. (see Title 26, ch. 10).

Rule 202. Judicial notice of law.

(a) Scope of rule. This rule governs judicial notice of law.

(b) Kinds of law. Law includes but is not limited to the following:

(1) The common law, constitutions and statutes of the United States and of this and every other state, territory and jurisdiction of the United States;

(2) Duly enacted ordinances and regulations of governmental divisions of this state, including their charters;

(3) Regulations and legislative enactments issued by or under authority of the United States and of this and any state of the United States by or for their agencies or administrations;

(4) Official acts of the legislative, executive, and judicial departments of the United States and of this and any state of the United States;

(5) Private acts and resolutions of the Congress of the United States and of the legislature of this state;

(6) Records of any court of this state or of any court of record of the United States or any court of record of any state of the United States;

(7) Rules of practice and procedure of any court of this state or of any court of record of the United States or any court of record of any state of the United States;

(8) The law of foreign nations;

(9) International law;

(10) Maritime law;

(11) The seals of office of the officers of government in the legislative, executive, and judicial departments of government of the United States and of this and every other state, territory and jurisdiction of the United States, of any foreign jurisdiction recognized by the executive power of the United States, and of notaries public.

(c) When discretionary. A court may take judicial notice of the law listed in parts 2-10 of Rule 202(b) or other law, whether requested or not. The court may inform itself of any law in such manner as it may deem proper and the court may call upon counsel to aid it in obtaining such information.

(d) When mandatory. A court shall take judicial notice:

(1) of the common law, constitutions and statutes of the United States and of this and every other state, territory and jurisdiction of the United States; and

(2) of any other law when requested by a party and supplied with the necessary information.

(e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the law noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice.

(1) Judicial notice of the laws of this state and of the United States may be taken at any stage of the proceedings.

(2) Any party may present to the judge or court any admissible evidence of law. To enable a party to offer evidence of the law other than of this state and of the United States or to ask that judicial notice be taken thereof, reasonable notice shall be given to the adverse party either in the pleadings or otherwise.

(g) Question for the court. Except as otherwise provided by law, the determination of law shall be made by the court.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Common law — applicability, 1-1-108.

Administrative rules — judicial notice, 2-4-505.

Courts of record — Montana, 3-1-102.

Seal of State Tax Appeal Board — statutory recognition, 15-2-106.

Issue concerning foreign law — notice, Rule 44.1, M.R.Civ.P. (see Title 25, ch. 20).

Questions of law — province of court, 26-1-201.

Books containing laws presumed correct, 26-1-603.

Self-authenticating public documents and records — official publications, Rule 902, M.R.Ev. (see Title 26, ch. 10).

Contents of documents — "best evidence rule", Art. X, M.R.Ev. (see Title 26, ch. 10).

Article III

Presumptions

Article Cross-References

Presumptions — statutory provisions, Title 26, ch. 1, part 6.

List of presumptions — Table "D" (see part compiler's comments, Title 26, ch. 1, part 6).

Rule 301. Presumptions in general.

(a) Presumption defined. A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action or proceeding.

(b) Classification and effect of presumptions.

(1) Conclusive presumptions are presumptions that are specifically declared conclusive by statute. Conclusive presumptions may not be controverted.

(2) All presumptions, other than conclusive presumptions, are disputable presumptions and may be controverted. A disputable presumption may be overcome by a preponderance of evidence contrary to the presumption. Unless the presumption is overcome, the trier of fact must find the assumed fact in accordance with the presumption.

(c) Inconsistent presumptions. If presumptions are inconsistent the court shall apply the presumption that is founded upon weightier considerations of public policy. If considerations of public policy are of equal weight the court shall disregard both presumptions.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Conclusive presumptions — statutory provisions, 26-1-601.

Disputable presumptions — statutory provisions, 26-1-602.

Rule 302. Applicability of federal law in civil cases.

In civil actions and proceedings, the effect of a presumption respecting a fact which is an element of a claim or defense as to which federal law supplies the rule of decision is determined in accordance with federal law.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Article IV

Relevancy and Its Limits

Rule 401. Definition of relevant evidence.

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Relevant evidence may include evidence bearing upon the credibility of a witness or hearsay declarant.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 402. Relevant evidence generally admissible; irrelevant evidence inadmissible.

All relevant evidence is admissible, except as otherwise provided by constitution, statute, these rules, or other rules applicable in the courts of this state. Evidence which is not relevant is not admissible.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Interpretation of instruments, Title 1, ch. 4, part 1.

Limitation of relevant evidence — pretrial procedure, Rule 16, M.R.Civ.P. (see Title 25, ch. 20).

Disobedience to discovery — prohibition on introduction of evidence, Rule 37(b), M.R.Civ.P. (see Title 25, ch. 20).

Admissibility of evidence, Rule 104, M.R.Ev. (see Title 26, ch. 10).

Exemplary or punitive damages — limit on evidence regarding defendant's financial affairs or net worth, 27-1-221.

Statute of Frauds — contracts, 28-2-903.

Parol evidence rule — written contracts, 28-2-905, 28-3-402.

Statute of Frauds — U.C.C. sales, 30-2-201.

Inadmissibility of polygraph examination or similar test conducted by polygraph examiner, 37-62-302.

Sexual intercourse without consent — victim's sexual conduct — limits on admissibility, 45-5-503.

Exclusionary rule, 46-13-302.

Responsibility of vehicle users and owners — matters not to be evidence in civil suits, 61-6-108.

Failure to use child restraints in motor vehicles — admissible — no presumption of negligence, 61-9-422.

Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Cumulative evidence defined, 26-1-102.

Witnesses — protection from harassment, 26-2-401.

Rule 404. Character evidence not admissible to prove conduct, exceptions; other crimes; character in issue.

(a) Character evidence generally. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(1) Character of accused. Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same.

(2) Character of victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case or in an assault case where the victim is incapable of testifying to rebut evidence that the victim was the first aggressor.

(3) Character of witness. Evidence of the character of a witness, as provided in Article VI.

(b) Other crimes, wrongs, acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(c) Character in issue. Evidence of a person's character or a trait of his character is admissible in cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 405. Methods of proving character.

(a) Reputation or opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, or where the character of the victim relates to the reasonableness of force used by the accused in self defense, proof may also be made of specific instances of his conduct.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Opinion testimony by lay witnesses, Rule 701, M.R.Ev. (see Title 26, ch. 10).

Rule 406. Habit; routine practice.

(a) Habit and routine practice defined. A habit is a person's regular response to a repeated specific situation. A routine practice is a regular course of conduct of a group of persons or an organization.

(b) Admissibility. Evidence of habit or of routine practice, whether corroborated or not, and regardless of the presence of eyewitnesses, is relevant to prove that conduct on a particular occasion was in conformity with the habit or routine practice.

(c) Method of proof. Habit or routine practice may be proved by testimony in the form of an opinion or by specific instances of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.**

Cross-References

Corroborative evidence defined, 26-1-102.

Opinion testimony of lay witnesses, Rule 701, M.R.Ev. (see Title 26, ch. 10).

Usage of trade — U.C.C., 30-1-205.

Rule 407. Subsequent remedial measures.

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.**

Cross-References

Liability for negligence as well as willful acts, 27-1-701.

Rule 408. Compromise and offers to compromise.

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.**

Cross-References

Offers of judgment — not admissible:

District Court, Rule 68, M.R.Civ.P. (see Title 25, ch. 20).

Municipal Court, 25-30-101.

Justice's Court, 25-31-116.

Voluntary partial payment of claim — not admissible, Title 26, ch. 1, part 7.

Confession of judgment, Title 27, ch. 9, part 1.

Rule 409. Payment of expenses.

Evidence of payment of expenses occasioned by an injury or occurrence is not admissible to prove liability.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.**

Cross-References

Voluntary payment of claims — not admissible, Title 26, ch. 1, part 7.

Rule 410. Offer to plead guilty; nolo contendere; withdrawn plea of guilty.

Evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal action, case, or proceeding against the person who made the plea or offer. This rule shall not apply to the introduction of voluntary and reliable statements made in court on the record in connection with any of the foregoing pleas or offers where offered for impeachment purposes or in a subsequent prosecution of the declarant for perjury or false statement.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Plea of guilty, 46-12-204.

Deferred imposition of sentence — withdrawal of guilty plea, 46-18-204.

Rule 411. Liability insurance.

Evidence that a person was or was not insured against liability is not admissible upon the issue whether he acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Liability for negligence as well as willful acts, 27-1-701.

Actions against public bodies — insurance not to be disclosed, 33-23-102.

Responsibility of vehicle owners and users — matters not to be evidence in civil suits, 61-6-108.

Vehicles — mandatory liability protection, Title 61, ch. 6, part 3.

Article V

Privileges

Article Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Statutory provisions on privileges — list, Title 26, ch. 1, part 8.

Rule 501. Privileges recognized only as provided.

Except as otherwise provided by constitution, statute, these rules, or other rules applicable in the courts of this state, no person has a privilege to:

(1) refuse to be a witness;

(2) refuse to disclose any matter;

(3) refuse to produce any object or writing; or

(4) prevent another from being a witness or disclosing any matter or producing any object or writing.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Statutory provisions on evidence — list, Title 26, ch. 1, part 8.

Witness required to answer questions, 26-2-302.

Child abuse and neglect — privileges suspended except attorney-client, 41-3-201, 41-3-204, 41-3-404.

Promoting prostitution — testimony of spouse, 45-5-604.

Tampering with witnesses and informants, 45-7-206.

Rule 502. Identity of informer.

(a) Rule of privilege. The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law.

(b) Who may claim the privilege. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished.

(c) Exceptions and limitations.

(1) Voluntary disclosure; informer a witness. No privilege exists under this rule if the identity of the informer or his interest in the subject matter of his communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the public entity.

(2) Testimony on relevant issue. If it appears in the case that an informer may be able to give testimony relevant to any issue in a criminal case or to a fair determination of a material issue on the merits in a civil case to which a public entity is a party, and the public entity invokes the privilege, the court shall give the public entity an opportunity to show facts relevant to determining whether the informer can, in fact, supply that testimony.

If the Court finds that the informer should be required to give the testimony, and the public entity elects not to disclose his identity, the court on motion of the defendant in a criminal case shall dismiss the charges to which the testimony would relate, and the court may do so on its own motion. In civil cases, the court may make any order that justice requires.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Discovery of witnesses — notice of certain defenses, 46-15-323.

Rule 503. Waiver of privilege by voluntary disclosure.

(a) General rule. A person upon whom these rules confer a privilege against disclosure waives the privilege if he or his predecessor while the holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This rule does not apply if the disclosure itself is privileged.

(b) Joint holders. Where two or more persons are joint holders of a privilege, a waiver of the right of a particular joint holder to claim the privilege does not affect the right of another joint holder to claim the privilege.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 504. Privileged matter disclosed under compulsion or without opportunity to claim the privilege.

A claim of privilege is not defeated by a disclosure which was (a) compelled erroneously or (b) made without opportunity to claim the privilege.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 505. Comment upon or inference from claim of privilege.

The claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by the court or counsel. No inference may be drawn therefrom.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Instruction — weaker or less satisfactory evidence, 26-1-303.

Presumption — evidence suppressed as adverse, 26-1-602.

Waiver of privilege, 26-1-903.

Article VI

Witnesses

Article Cross-References

Masters — power to subpoena witnesses, Rule 53(d), M.R.Civ.P. (see Title 25, ch. 20).

Witness — defined, 26-1-101.

Witnesses — generally, Title 26, ch. 2.

Subpoena of witnesses, Title 26, ch. 2, part 1.

Perjury — crime, 45-7-201.

Tampering with witnesses or informants — crime, 45-7-206.

Videotaped testimony admissible — victim of sexual intercourse without consent, deviate sexual conduct, or incest, Title 46, ch. 15, part 4.

Interpreters for the deaf in official proceedings, Title 49, ch. 4, part 5.

Rule 601. Competency in general; disqualification.

(a) General rule competency. Every person is competent to be a witness except as otherwise provided in these rules.

(b) Disqualification of witnesses. A person is disqualified to be a witness if the court finds that (1) the witness is incapable of expressing himself concerning the matter so as to be understood by the judge and jury either directly or through interpretation by one who can understand him or (2) the witness is incapable of understanding the duty of a witness to tell the truth.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Witness presumed to speak the truth, 26-1-302.

Criminal actions — applicability of rule, 46-16-211.

Competency of spouse — criminal actions, 46-16-212.

Rule 602. Lack of personal knowledge.

A witness may not testify as to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

"Hearsay" defined, Rule 801, M.R.Ev. (see Title 26, ch. 10).

Rule 603. Oath or affirmation.

Before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Oaths and affirmations, Title 1, ch. 6, part 1.

Affirmation in lieu of oath, Rule 43(d), M.R.Civ.P. (see Title 25, ch. 20).

Witness before a master, Rule 53(c), M.R.Civ.P. (see Title 25, ch. 20).

Perjury — crime, 45-7-201.

False swearing — crime, 45-7-202.

Rule 604. Interpreters.

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Appointment by court, Rule 43(f), M.R.Civ.P. (see Title 25, ch. 20).

Deaf persons — interpreters, Title 49, ch. 4, part 5.

Privilege — interpreters for the deaf, 49-4-511.

Rule 605. Competency of judge as witness.

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 606. Competency of juror as witness.

(a) At the trial. A member of the jury may not be called or testify as a witness before that jury in the trial of the case in which he is sitting as a juror. If he is called to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent or dissent from the verdict or indictment or concerning his mental processes in connection therewith. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.

However, as an exception to this subdivision, a juror may testify and an affidavit or evidence of any kind be received as to any matter or statement concerning only the following questions, whether occurring during the course of the jury's deliberations or not: (1) whether extraneous prejudicial information was improperly brought to the jury's attention; or (2) whether any outside influence was brought to bear upon any juror; or (3) whether any juror has been induced to assent to any general or special verdict, or finding on any question submitted to them by the court, by a resort to the determination of chance.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Conduct of jury after case submitted to it, 25-7-403.

Jury's request for further information, 25-7-405.

Misconduct of jury — new trial, 25-11-102.

Special verdicts and interrogatories, Rule 49, M.R.Civ.P. (see Title 25, ch. 20).

Improper influence in official matters — crime, 45-7-102.

Conduct of jury — criminal trials, Title 46, ch. 16, part 5.

Poll of jury — criminal verdict, 46-16-604.

Rule 607. Who may impeach; party not bound by testimony.

(a) The credibility of a witness may be attacked by any party, including the party calling him.

(b) No party is bound by the testimony of any witness.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Parties, Title 25, ch. 5.

Effect of using depositions, Rule 32(c), M.R.Civ.P. (see Title 25, ch. 20).

Scope of examination — not bound by witness — impeachment, Rule 43(b), M.R.Civ.P. (see Title 25, ch. 20).

Criminal depositions — use in impeaching, 46-15-204.

Rule 608. Evidence of character and conduct of witness.

(a) Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning his character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of his privilege against self-incrimination when examined with respect to matters which relate only to credibility.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Privilege against self-incrimination, Art. II, sec. 25, Mont. Const.

Witness presumed to speak the truth — rebuttable, 26-1-302.

Degradation of witnesses' character — need not answer, 26-2-302.

Protection of witnesses from harassment, 26-2-401.

Opinion testimony by lay witnesses, Rule 701, M.R.Ev. (see Title 26, ch. 10).

Inadmissibility of results of polygraph, 37-62-302.

Rule 609. Impeachment by evidence of conviction of crime.

For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime is not admissible.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Rights of the convicted — restoration of full rights, Art. II, sec. 28, Mont. Const.

Previous conviction of felony — witness required to answer question, 26-2-302.

Effect of conviction — restoration of civil rights, 46-18-801.

Rule 610. Religious beliefs or opinions.

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by their nature his credibility is impaired or enhanced.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Religious beliefs — equal protection, Art. II, sec. 4, Mont. Const.

Freedom of religion, Art. II, sec. 5, Mont. Const.

Rule 611. Mode and order of interrogation and presentation; re-examination and recall; confrontation.

(a) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross-examination.

(1) Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(2) Evidence developed on cross-examination may be considered by the trier of fact as proof of any fact in issue in the case.

(c) Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

(d) Re-examination and recall. A witness may be re-examined as to the same matters to which he testified only in the discretion of the court, but without exception he may be re-examined as to any new matter brought out during cross-examination. After the examination of the witness has been concluded by all the parties to the action, that witness may be recalled only in the discretion of the court. This rule shall not limit the right of any party to recall a witness in rebuttal.

(e) Confrontation. Except as otherwise provided by constitution, statute, these rules, or other rules applicable to the courts of this state, at the trial of an action, a witness can be heard only in the presence and subject to the examination of all the parties to the action, if they choose to attend and examine.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Right of accused to confront witnesses, Art. II, sec. 24, Mont. Const.

Order of trial — civil, 25-7-301.

Scope of examination and cross-examination, Rule 43(b), M.R.Civ.P. (see Title 25, ch. 20).

Examination of witnesses — types, 26-1-101.

Leading question — defined, 26-1-101.

Witness required to attend, 26-2-301.

Protection of witnesses from harassment, 26-2-302, 26-2-401.

Videotaped testimony admissible — victims of certain sexual crimes, Title 46, ch. 15, part 4.

Order of trial — criminal, 46-16-402.

Rule 612. Writings used to refresh memory.

If a witness uses a writing to refresh his memory for the purpose of testifying, either

(1) while testifying, or

(2) before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce into evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objection shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Failure to produce documents — civil procedure, Rule 37(b), M.R.Civ.P. (see Title 25, ch. 20).

Record on appeal, Rule 9, M.R.App.P. (see Title 25, ch. 21).

Discovery — criminal actions, 46-15-321 through 46-15-329.

Rule 613. Prior statements of witnesses.

(a) Examining witness concerning prior statement. In examining a witness concerning a prior statement made by him, whether written or not, the statement need not be shown nor its contents disclosed to him at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) Extrinsic evidence of prior inconsistent statement of witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.**

Cross-References

When extrinsic evidence concerning a written agreement may be considered, 28-2-905.

Final written expression — parol or extrinsic evidence, 30-2-202.

Criminal depositions — use for impeaching, 46-15-204.

Extrinsic evidence not to be considered in construction of deed — exceptions, 70-20-202.

Rule 614. Calling and interrogation of witnesses by court.

(a) Calling by court. The court may, on its own motion or at the suggestion of a party, call witnesses and all parties are entitled to cross-examine witnesses thus called.

(b) Interrogation by court. The court may interrogate witnesses, whether called by itself or a party; provided, however, that in trials before a jury, the court's questioning must be cautiously guarded so as not to constitute express or implied comment.

(c) Objections. Objections to the calling of a witness by the court or to the interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.**

Cross-References

Powers of masters, Rule 53(c), M.R.Civ.P. (see Title 25, ch. 20).

Objections to admissibility of evidence, Rule 104, M.R.Ev. (see Title 26, ch. 10).

Rule 615. Exclusion of witnesses.

At the request of a party, the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of his cause.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.**

Cross-References

When videotaped testimony admissible, 46-15-401.

Article VII

Opinions and Expert Testimony

Article Cross-References

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Expert witness, 26-2-505.

Rule 701. Opinion testimony by lay witnesses.

If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.**

Rule 702. Testimony by experts.

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.**

Cross-References

Pretrial discovery regarding experts, Rule 26(b), M.R.Civ.P. (see Title 25, ch. 20).

Polygraph examiners — inadmissibility of results of examinations, 37-62-302.

Rule 703. Basis of opinion testimony by experts.

The facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in a particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.**

Cross-References

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Rule 704. Opinions on ultimate issue.

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.**

Rule 705. Disclosure of facts or data underlying expert opinion.

The expert may testify in terms of opinion or inference and give his reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.**

Cross-References

Scope of discovery of experts, Rule 26(b)(4), M.R.Civ.P. (see Title 25, ch. 20).

Article VIII

Hearsay

Rule 801. Definitions.

The following definitions apply under this article:

(a) Statement. A statement is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by him as an assertion.

(b) Declarant. A declarant is a person who makes a statement.

(c) Hearsay. Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements which are not hearsay. A statement is not hearsay if:

(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with his testimony, or (B) consistent with his testimony and is offered to rebut an express or implied charge against him of subsequent fabrication, improper influence or motive, or (C) one of identification of a person made after perceiving him; or

(2) Admission by party-opponent. The statement is offered against a party and is (A) his own statement, in either his individual or a representative capacity, or (B) a statement of which he has manifested his adoption or belief in its truth, or (C) a statement by a person authorized by him to make a statement concerning the subject, or (D) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of that relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 802. Hearsay rule.

Hearsay is not admissible except as otherwise provided by statute, these rules, or other rules applicable in the courts of this state.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Record of excluded evidence, Rule 43(c), M.R.Civ.P. (see Title 25, ch. 20).

Transaction rule — hearsay exception, 26-1-103.

Child support order — evidence of duty to support — Revised Uniform Reciprocal Enforcement of Support Act (1968), 40-5-124.

Rule 803. Hearsay exceptions: availability of declarant immaterial.

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then-existing mental, emotional, or physical condition. A statement of the declarant's then-existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed.

(4) Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnosis, made at or near the time of the acts, events, conditions, opinions, or diagnosis, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) Absence of entry in records kept in accordance with the provisions of paragraph (6). Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Public records and reports. To the extent not otherwise provided in this paragraph, records, reports, statements, or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule: (i) investigative reports by police and other law enforcement personnel; (ii) investigative reports prepared by or for a government, a public office, or an agency when offered by it in a case in which it is a party; (iii) factual findings offered by the government in criminal cases; (iv) factual findings resulting from special investigation of a particular complaint, case, or incident; and (v) any matter as to which the sources of information or other circumstances indicate lack of trustworthiness.

(9) Records of vital statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) Absence of public record or entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement or data compilation, or entry.

(11) Records of religious organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) Statements in documents affecting an interest in property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in ancient documents. Statements in a document in existence twenty years or more, the authenticity of which is established.

(17) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) Learned treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by him in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) Reputation concerning personal or family history. Reputation among members of his family by blood, adoption, or marriage, or among his associates, or in the community, concerning a person's birth, adoption, marriage, divorce or dissolution of marriage, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of his personal or family history.

(20) Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.

(21) Reputation as to character. Reputation of a person's character among his associates or in the community.

(22) Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the prosecution in a criminal prosecution, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) Judgment as to personal, family, or general history, or boundaries. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(24) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having comparable circumstantial guarantees of trustworthiness.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Preference for contemporaneity — maxim, 1-3-226.

Interrogatories — business records involved in answering, Rule 33(c), M.R.Civ.P. (see Title 25, ch. 20).

Nonexistence of record — authentication, Rule 44(b), M.R.Civ.P. (see Title 25, ch. 20).

Transaction rule — hearsay exception, 26-1-103.

Motor vehicle accident reports — confidential — not admissible, 61-7-114.

Rule 804. Hearsay exceptions: declarant unavailable.

(a) Definition of unavailability. Unavailability as a witness includes situations in which the declarant:

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of his statement; or

(2) persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of his statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means.

A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, (A) in civil actions and proceedings, at the instance of or against a party with an opportunity to develop the testimony by direct, cross, or redirect examination, with motive and interest similar to those of the party against whom now offered; and (B) in criminal actions and proceedings, if the party against whom the testimony is now offered had an opportunity and similar motive to develop the testimony by direct, cross, and redirect examination.

(2) Statement under belief of impending death. A statement made by a declarant while believing that his death was imminent, concerning the cause or circumstance of what he believed to be his impending death.

(3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability, or to render invalid a claim by him against another or to make him an object of hatred, ridicule, or disgrace, that a reasonable man in his position would not have made the statement unless he believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of personal or family history. (A) A statement concerning the declarant's own birth, adoption, marriage, divorce or dissolution of marriage, legitimacy, relationship by blood, or family history, even though the declarant had no means of acquiring the personal knowledge of the matter stated; or

(B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having comparable circumstantial guarantees of trustworthiness.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.**

Cross-References

Admissions by party — pretrial discovery — may not be used in other proceeding, Rule 36(b), M.R.Civ.P. (see Title 25, ch. 20).

Writings made against author's interest, 26-1-607.

Subpoena of witness, Title 26, ch. 2, parts 1 and 2.

Effect of former judgments and orders, Title 26, ch. 3.

Criminal depositions — use at trial or hearing, 46-15-204.

Rule 805. Hearsay within hearsay.

Hearsay included within hearsay is not excluded under the hearsay rule if each part of a combined statement conforms with an exception to the hearsay rule provided in these rules.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.**

Rule 806. Attacking and supporting the credibility of declarant.

When a hearsay statement, or a statement defined in Rule 801(d)(2), (C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked and, if attacked, may be supported by any evidence which would be admissible for those purposes if the declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with his hearsay statement, is not subject to any requirement that he may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine him on the statement as if under cross-examination.

History: **Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.**

Cross-References

Impeachment of witnesses, Rule 43(b), M.R.Civ.P. (see Title 25, ch. 20).

Impeachment of own witnesses, Rule 607, M.R.Ev. (see Title 26, ch. 10).

Article IX

Authentication and Identification

Article Cross-References

Subpoena — production of documentary evidence, Rule 45(b), M.R.Civ.P. (see Title 25, ch. 20).

Alterations in writing — explanations of, 26-1-106.

Rule 901. Requirement of authentication or identification.

(a) General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of witness with knowledge. Testimony that a matter is what it is claimed to be.

(2) Nonexpert opinion on handwriting. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) Comparison by trier or expert witness. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) Distinctive characteristics and the like. Appearance, contents, substance, internal patterns or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) Public records or reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) Ancient documents or data compilation. Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 20 years or more at the time it is offered.

(9) Process or system. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Method provided by statute or rule. Any method of authentication or identification provided by statute, these rules, or other rules applicable in the courts of this state.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Proof of execution of instrument — handwriting, 1-5-302.

Genuineness of document — failure to admit — liable for expenses, Rule 37(c), M.R.Civ.P. (see Title 25, ch. 20).

Authentication of official record, Rule 44(a), M.R.Civ.P. (see Title 25, ch. 20).

Presumptions of authenticity — list of writings, 26-1-602.

Driving under influence of alcohol or drugs — test evidence admissible, 61-8-404.

Radar speed determinations — admissibility, 61-8-702.

Rule 902. Self-authentication.

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) Domestic public documents under seal. A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) Domestic public documents not under seal. Except as otherwise provided by statute, a document purporting to bear the signature in his official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) Foreign public documents. A document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution of attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If a reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized

to make the certification, by certificate complying with paragraph (1), (2), or (3) or complying with any law of the United States or of this state.

(5) Official publications. Books, pamphlets, or other publications purporting to be issued by public authority.

(6) Newspapers and periodicals. Printed materials purporting to be newspapers or periodicals.

(7) Trade inscriptions and the like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) Acknowledged documents. Documents accompanied by a certificate of acknowledgement executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgements.

(9) Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) Presumptions created by law. Any signature, document, or other matter declared by any law of the United States or of this state to be presumptively or prima facie genuine or authentic.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Proof and acknowledgment, Title 1, ch. 5.

Proof of execution of instrument, Title 1, ch. 5, part 3.

Court reporter's report — prima facie evidence of contents, 3-5-612; Rule 80, M.R.Civ.P. (see Title 25, ch. 20).

Authentication of official record — foreign and domestic, Rule 44(a), M.R.Civ.P. (see Title 25, ch. 20).

Other proof of official record — as authorized by law, Rule 44(c), M.R.Civ.P. (see Title 25, ch. 20).

Official publication — presumption of authenticity, 26-1-602.

Self-proved wills, 72-2-304.

Rule 903. Subscribing witness' testimony unnecessary.

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Proof of execution — subscribing witnesses, 1-5-301.

Wills — attesting witnesses testimony, 72-2-213, 72-3-309.

Article X

Contents of Writings, Recordings, and Photographs

Article Cross-References

Interpretation of instruments, Title 1, ch. 4, part 1.

Pretrial discovery — writings and recordations, Rule 26(b), M.R.Civ.P. (see Title 25, ch. 20).

Production of documents and other tangible things containing information, Rule 34(a), M.R.Civ.P. (see Title 25, ch. 20).

Genuineness of document — failure to admit — expenses for proof, Rule 37(c), M.R.Civ.P. (see Title 25, ch. 20).

Subpoena — production of documentary evidence, Rule 45(b), M.R.Civ.P. (see Title 25, ch. 20).

Alterations in writing — explanation of, 26-1-106.

Motor vehicle accident reports — confidential — not admissible, 61-7-114.

Rule 1001. Definitions.

For purposes of this article the following definitions are applicable:

(1) Writings and recordings. Writings and recordings consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) Photographs. Photographs include still photographs, x-ray films, video tapes, and motion pictures.

(3) Original. An original of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An original of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an original.

(4) Duplicate. A duplicate is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original.

(5) Copies of entries in the regular course of business. A copy of an entry in the regular course of business consists of an entry in a writing kept in the regular course of business copied from another such writing by manual or mechanical means at or near the time of the transaction.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Inadmissibility of results of polygraph, 37-62-302.

Videotaped testimony — sexual offenses, 46-15-401.

Rule 1002. Requirement of original.

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided by statute, these rules, or other rules applicable in the courts of this state.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Banks and trust companies — copies of transactions — admissibility, 32-1-493.

Rule 1003. Admissibility of duplicates, copies of certain entries.

A duplicate, or copy of an entry in the regular course of business as defined in Rule 1001(5), is admissible to the same extent as an original unless:

(1) a genuine question is raised as to the authenticity of the original; or

(2) in the circumstances it would be unfair to admit the duplicate or copy of an entry in the regular course of business in lieu of the original; or

(3) otherwise provided by statute.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Lost, destroyed, or stolen obligation instrument — may maintain action, 30-3-804.

Warehouse receipts and bills of lading — lost and missing documents, 30-7-601.

Banks and trust companies — reproductions of transactions, 32-1-493.

Original will required — informal probate, 72-3-203, 72-3-212.

Rule 1004. Admissibility of other evidence of contents.

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

(1) Originals lost or destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(2) Original not obtainable. No original can be obtained by any available judicial process or procedure; or

(3) Original in possession of opponent. At a time when an original was under the control of the party against whom offered, he was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and he does not produce the original at the hearing; or

(4) Collateral matters. The writing, recording, or photograph is not closely related to a controlling issue.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Uniform Commercial Code — lost obligation instrument, 30-3-804.

Rule 1005. Public records.

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Public records — presumption of correctness, 26-1-602.

Rule 1006. Summaries.

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Rule 1007. Testimony or written admission of party.

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by his written admission, without accounting for the nonproduction of the original.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Requests for admission — effect, Rule 36, M.R.Civ.P. (see Title 25, ch. 20).

Rule 1008. Functions of court and jury.

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is for the court to determine in accordance with the provisions of Rule 104.

History: Ad. Sup. Ct. Ord. 12729, Dec. 29, 1976, eff. July 1, 1977.

Cross-References

Role of court, 25-7-102, 26-1-201.

TITLE 27

CIVIL LIABILITY, REMEDIES, AND LIMITATIONS

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2. Statutes of Limitations.
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CHAPTER 1

AVAILABILITY OF REMEDIES — LIABILITY

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27-1-101. Judicial remedies defined. Judicial remedies are such as are administered by the courts of justice or by judicial officers empowered for the purpose by the constitution and statutes of this state.

History: En. Sec. 3469, C. Civ. Proc. 1895; re-en. Sec. 8077, Rev. C. 1907; re-en. Sec. 8995, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 20; re-en. Sec. 8995, R.C.M. 1935; R.C.M. 1947, 93-2201.

Cross-References
Remedy for every wrong, 1-3-214.

27-1-102. Actions and special proceedings defined. (1) These remedies are divided into two classes:

(a) actions; and

(b) special proceedings.

(2) An action is an ordinary proceeding in a court of justice by which one party prosecutes another for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense. Every other remedy is a special proceeding.

History: (1)En. Sec. 3470, C. Civ. Proc. 1895; re-en. Sec. 8078, Rev. C. 1907; re-en. Sec. 8996, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 21; re-en. Sec. 8996, R.C.M. 1935; Sec. 93-2202, R.C.M. 1947; (2)Ap. p. Sec. 3471, C. Civ. Proc. 1895; re-en. Sec. 8079, Rev. C. 1907; re-en. Sec. 8997, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 22; re-en. Sec. 8997, R.C.M. 1935; Sec. 93-2203, R.C.M. 1947; Ap. p. Sec. 3472, C. Civ. Proc. 1895; re-en. Sec. 8080, Rev. C. 1907; re-en. Sec. 8998, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 23; re-en. Sec. 8998, R.C.M. 1935; Sec. 92-2204, R.C.M. 1947; R.C.M. 1947, 92-2202, 93-2203, 93-2204.

Cross-References
Claim for relief, Rule 8(a), M.R.Civ.P. (see Title 25, ch. 20).

27-1-103. Civil and criminal actions. (1) Actions are of two kinds:

(a) civil; and

(b) criminal.

(2) A civil action is prosecuted by one party against another for the enforcement or protection of a right or the redress or prevention of a wrong. Titles 45 and 46 define and provide for the prosecution of a criminal action. When the violation of a right admits of both a civil and criminal remedy, the right to prosecute the one is not merged in the other.

History: (1)En. Sec. 3473, C. Civ. Proc. 1895; re-en. Sec. 8081, Rev. C. 1907; re-en. Sec. 8999, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 24; re-en. Sec. 8999, R.C.M. 1935; Sec. 92-2205, R.C.M.

1947; (2)Ap. p. Sec. 3479, C. Civ. Proc. 1895; re-en. Sec. 8087, Rev. C. 1907; re-en. Sec. 9005, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 30; re-en. Sec. 9005, R.C.M. 1935; Sec. 93-2211, R.C.M. 1947; Ap. p. Sec. 3480, C. Civ. Proc. 1895; re-en. Sec. 8088, Rev. C. 1907; re-en. Sec. 9006, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 31; re-en. Sec. 9006, R.C.M. 1935; Sec. 93-2212, R.C.M. 1947, 93-2212; Ap. p. Sec. 3481, C. Civ. Proc. 1895; re-en. Sec. 8089, Rev. C. 1907; re-en. Sec. 9007, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 32; re-en. Sec. 9007, R.C.M. 1935; Sec. 93-2213, R.C.M. 1947; R.C.M. 1947, 93-2205, 93-2211, 93-2212, 93-2213.

Cross-References

One form of civil action, 25-1-101.

Entry of judgment, Rule 58, M.R.Civ.P. (See Title 25).

Effect of code upon criminal acts, 45-1-104.

27-1-104. Bases for civil actions. A civil action arises out of:

(1) an obligation;

(2) an injury.

History: En. Sec. 3474, C. Civ. Proc. 1895; re-en. Sec. 8082, Rev. C. 1907; re-en. Sec. 9000, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 25; re-en. Sec. 9000, R.C.M. 1935; R.C.M. 1947, 93-2206.

Cross-References

One form of civil action, 25-1-101.

Entry of judgment and satisfaction — lien, Title 25, ch. 9, part 3.

Appeal to Supreme Court, Title 25, ch. 12.

Execution of judgment, Title 25, ch. 13.

Execution, Rule 69, M.R.Civ.P. (See Title 25, ch. 20).

How appeal taken, Rule 4, M.R.App.P. (See Title 25, ch. 21).

Obligations in general, Title 28, ch. 1.

27-1-105. Obligation defined. An obligation is a legal duty by which one person is bound to do or not to do a certain thing and arises from:

(1) contract; or

(2) operation of law.

History: En. Sec. 3475, C. Civ. Proc. 1895; re-en. Sec. 8083, Rev. C. 1907; re-en. Sec. 9001, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 26; re-en. Sec. 9001, R.C.M. 1935; R.C.M. 1947, 93-2207.

Cross-References

How obligation arises, 28-1-102.

27-1-106. Injury defined. (1) An injury is of two kinds:

(a) to the person; and

(b) to property.

(2) An injury to property consists in depriving its owner of the benefit of it, which is done by taking, withholding, deteriorating, or destroying it. Every other injury is an injury to the person.

History: (1)En. Sec. 3476, C. Civ. Proc. 1895; re-en. Sec. 8084, Rev. C. 1907; re-en. Sec. 9002, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 27; re-en. Sec. 9002, R.C.M. 1935; Sec. 93-2208, R.C.M. 1947; (2)Ap. p. Sec. 3477, C. Civ. Proc. 1895; re-en. Sec. 8085, Rev. C. 1907; re-en. Sec. 9003, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 28; re-en. Sec. 9003, R.C.M. 1935; Sec. 93-2209, R.C.M. 1947; Ap. p. Sec. 3478, C. Civ. Proc. 1895; re-en. Sec. 8086, Rev. C. 1907; re-en. Sec. 9004, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 29; re-en. Sec. 9004, R.C.M. 1935; Sec. 93-2210, R.C.M. 1947; R.C.M. 1947, 93-2208, 93-2209, 93-2210.

27-1-107. Kinds of relief — when given. As a general rule, compensation is the relief or remedy provided by the law of this state for the violation of private rights and the means of securing their observance. Specific and preventive relief may be given only in those cases specified by statute.

History: En. Sec. 4260, Civ. C. 1895; re-en. Sec. 6038, Rev. C. 1907; re-en. Sec. 8657, R.C.M. 1921; Cal. Civ. C. Sec. 3274; re-en. Sec. 8657, R.C.M. 1935; R.C.M. 1947, 17-101; amd. Sec. 1, Ch. 12, L. 1979.

Cross-References

Specific and preventive relief, Title 27, ch. 1, part 4.

Part 2

Damages

Part Cross-References

Periodic payment of certain future damages, Title 25, ch. 9, part 4.

Limitation on liability for failure to comply with income withholding order, 40-5-424.

27-1-201. Detriment defined. Detriment is a loss or harm suffered in person or property.

History: En. Sec. 4271, Civ. C. 1895; re-en. Sec. 6041, Rev. C. 1907; re-en. Sec. 8660, R.C.M. 1921; Cal. Civ. C. Sec. 3282; Field Civ. C. Sec. 1833; re-en. Sec. 8660, R.C.M. 1935; R.C.M. 1947, 17-202.

27-1-202. Right to compensatory damages. Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation therefor in money, which is called damages.

History: En. Sec. 4270, Civ. C. 1895; re-en. Sec. 6040, Rev. C. 1907; re-en. Sec. 8659, R.C.M. 1921; Cal. Civ. C. Sec. 3281; Field Civ. C. Sec. 1832; re-en. Sec. 8659, R.C.M. 1935; R.C.M. 1947, 17-201.

Cross-References

The administration of justice, Art. II, sec. 16, Mont. Const.

Liability exposure, Title 2, ch. 9, part 1.

27-1-203. Right to damages for detriment resulting after suit brought and for future detriment. Damages may be awarded in a judicial proceeding for detriment resulting after the commencement thereof or certain to result in the future.

History: En. Sec. 4272, Civ. C. 1895; re-en. Sec. 6042, Rev. C. 1907; re-en. Sec. 8661, R.C.M. 1921; Cal. Civ. C. Sec. 3283; Field Civ. C. Sec. 1834; re-en. Sec. 8661, R.C.M. 1935; R.C.M. 1947, 17-203.

27-1-204. Nominal damages when no appreciable detriment. When a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages.

History: En. Sec. 4367, Civ. C. 1895; re-en. Sec. 6088, Rev. C. 1907; re-en. Sec. 8706, R.C.M. 1921; Cal. Civ. C. Sec. 3360; Field Civ. C. Sec. 1879; re-en. Sec. 8706, R.C.M. 1935; R.C.M. 1947, 17-608.

27-1-205 through 27-1-209 reserved.

27-1-210. Interest on torts. (1) Subject to subsection (2), in an action for recovery on an injury as defined in 27-1-106, a prevailing claimant is entitled to interest at a rate of 10% on any claim for damages awarded that are capable of being made certain by calculation, beginning from the date 30 days after the claimant presented a written statement to the opposing party or his agent stating the claim and how the specific sum was calculated.

(2) The interest provisions of subsection (1) do not apply to damages not capable of being made certain by calculation, including but not limited to future damages until such damages are incurred and damages for:

(a) pain and suffering;

(b) injury to credit, reputation, or financial standing;

(c) mental anguish or suffering;

(d) exemplary or punitive damages;
(e) loss of established way of life;
(f) loss of consortium; and
(g) attorney fees.

(3) The jury is to be advised by the court that the court will determine the amount of prejudgment interest due, if any, on any judgment rendered.

(4) Any payment by a party of any claim or interest thereon as set forth in subsection (1) shall not be an admission of liability and shall not be made known to the jury.

History: **En. Sec. 1, Ch. 523, L. 1985.**

Cross-References

Interest on judgments, 25-9-204; 25-9-205; Rule 31, M.R.App.P. (see Title 25, ch. 21).

Execution to include interest, 25-13-304.

27-1-211. Right to interest. Every person who is entitled to recover damages certain or capable of being made certain by calculation and the right to recover which is vested in him upon a particular day is entitled also to recover interest thereon from that day except during such time as the debtor is prevented by law or by the act of the creditor from paying the debt.

History: **En. Sec. 4280, Civ. C. 1895; re-en. Sec. 6043, Rev. C. 1907; re-en. Sec. 8662, R.C.M. 1921; Cal. Civ. C. Sec. 3287; Field Civ. C. Sec. 1835; re-en. Sec. 8662, R.C.M. 1935; R.C.M. 1947, 17-204.**

27-1-212. When award of interest discretionary. In an action for the breach of an obligation not arising from contract and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury. This section does not apply in actions for recovery of damages arising from injury to a person or property brought against a governmental entity under Title 2, chapter 9, parts 1 through 3, as amended.

History: **En. Sec. 4281, Civ. C. 1895; re-en. Sec. 6044, Rev. C. 1907; re-en. Sec. 8663, R.C.M. 1921; Cal. Civ. C. Sec. 3288; Field Civ. C. Sec. 1836; re-en. Sec. 8663, R.C.M. 1935; amd. Sec. 3, Ch. 234, L. 1977; R.C.M. 1947, 17-205.**

27-1-213. Validity of interest rate set by contract. Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation.

History: **En. Sec. 4282, Civ. C. 1895; re-en. Sec. 6045, Rev. C. 1907; re-en. Sec. 8664, R.C.M. 1921; Cal. Civ. C. Sec. 3289; Field Civ. C. Sec. 1837; re-en. Sec. 8664, R.C.M. 1935; R.C.M. 1947, 17-206.**

Cross-References

Interest rates allowed by agreement, 31-1-107.

27-1-214. Waiver of interest by accepting principal. Accepting payment of the whole principal, as such, waives all claim to interest.

History: **En. Sec. 4283, Civ. C. 1895; re-en. Sec. 6046, Rev. C. 1907; re-en. Sec. 8665, R.C.M. 1921; Cal. Civ. C. Sec. 3290; Field Civ. C. Sec. 1838; re-en. Sec. 8665, R.C.M. 1935; R.C.M. 1947, 17-207.**

27-1-215 through 27-1-219 reserved.

27-1-220. Punitive damages — when allowed. (1) Except as otherwise expressly provided by statute, a judge or jury may award, in addition to compensatory damages, punitive damages for the sake of example and for the purpose of punishing a defendant.

(2) (a) Unless otherwise expressly provided by statute, punitive damages may not be recovered in any action arising from:

(i) contract; or

(ii) breach of contract.

(b) Subsection (2)(a) does not prohibit recovery of punitive damages in a products liability action or an action arising under 33-18-201.

History: En. Sec. 1, Ch. 507, L. 1985; amd. Sec. 1, Ch. 627, L. 1987.

Compiler's Comments

1987 Amendment: Substituted present language for former section that read: "The purpose of 27-1-221 is to deter claims for punitive or exemplary damages that are not clearly based in fact, and to that end, the legislature intends for 27-1-221 to be used in combination with early and ready application and granting of motions for summary judgment pursuant to Rule 56 of the Montana Rules of Civil Procedure where such claims are not based in fact, and the application of the sanctions provided for in Rule 11 of the Montana Rules of Civil Procedure against those parties responsible for making such claims."

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Insurance coverage of punitive damages, 33-15-317.

27-1-221. Punitive damages — liability — proof — award. (1) Subject to subsection (2) and the provisions of 27-1-220, reasonable punitive damages may be awarded where the defendant has been guilty of actual fraud or actual malice.

(2) A defendant is guilty of actual malice if he has knowledge of facts or intentionally disregards facts that create a high probability of injury to the plaintiff and:

(a) deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to the plaintiff; or

(b) deliberately proceeds to act with indifference to the high probability of injury to the plaintiff.

(3) A defendant is guilty of actual fraud if he:

(a) makes a representation with knowledge of its falsity; or

(b) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury.

(4) Actual fraud exists only where the plaintiff has a right to rely upon the representation of the defendant and suffers injury as a result of such reliance. The contract definitions of fraud expressed in Title 28, chapter 2, do not apply to proof of actual fraud under this section.

(5) All elements of the claim for punitive damages must be proved by clear and convincing evidence. Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence, but less than beyond a reasonable doubt.

(6) Liability for punitive damages must be determined by the trier of fact, whether judge or jury.

(7) (a) Evidence regarding a defendant's financial affairs, financial condition, and net worth is not admissible in a trial to determine whether a defendant is liable for punitive damages. When the jury returns a verdict finding a defendant liable for punitive damages, the amount of punitive damages

must then be determined by the jury in an immediate, separate proceeding and be submitted to the judge for review as provided in subsection (7)(c). In the separate proceeding to determine the amount of punitive damages to be awarded, the defendant's financial affairs, financial condition, and net worth must be considered.

(b) When an award of punitive damages is made by the judge, he shall clearly state his reasons for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the following matters:

(i) the nature and reprehensibility of the defendant's wrongdoing;

(ii) the extent of the defendant's wrongdoing;

(iii) the intent of the defendant in committing the wrong;

(iv) the profitability of the defendant's wrongdoing, if applicable;

(v) the amount of actual damages awarded by the jury;

(vi) the defendant's net worth;

(vii) previous awards of punitive or exemplary damages against the defendant based upon the same wrongful act;

(viii) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and

(ix) any other circumstances which may operate to increase or reduce, without wholly defeating, punitive damages.

(c) The judge shall review a jury award of punitive damages, giving consideration to each of the matters listed in subsection (7)(b). If after review the judge determines that the jury award of punitive damages should be increased or decreased, he may do so. The judge shall clearly state his reasons for increasing, decreasing, or not increasing or decreasing the punitive damages award of the jury in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in subsection (7)(b).

(8) Nothing in this section is intended to alter the Montana Rules of Civil Procedure governing discovery of a defendant's financial affairs, financial condition, and net worth.

History: En. Sec. 4290, Civ. C. 1895; re-en. Sec. 6047, Rev. C. 1907; re-en. Sec. 8666, R.C.M. 1921; Cal. Civ. C. Sec. 3294; Field. Civ. C. Sec. 1839; re-en. Sec. 8666, R.C.M. 1935; R.C.M. 1947, 17-208; amd. Sec. 2, Ch. 507, L. 1985; amd. Sec. 2, Ch. 627, L. 1987.

Compiler's Comments

1987 Amendment: In (1) substituted present language for former (1) that read: "Subject to subsection (2), in any action for a breach of an obligation not arising from contract where the defendant has been guilty of oppression, fraud, or malice, actual or presumed, the jury, in addition to the actual damages, may give damages for the sake of example and by way of punishing the defendant"; inserted (2) through (4); in (5) substituted first sentence for "The jury may not award exemplary or punitive damages unless the plaintiff has proved all elements of the claim for exemplary or punitive damages by clear and convincing evidence"; deleted former (3) through (7) that read: "(3) Presumed malice exists when a person has knowledge of facts, intentionally avoids learning of facts, or recklessly disregards facts, knowledge of which may be proven by direct or circumstantial evidence, which creates a high degree of risk of harm to the substantial interests of another, and either deliberately proceeds to act in conscious disregard of or indifference to that risk or recklessly proceeds in unreasonable disregard of or indifference to that risk.

(4) The plaintiff may not present, with respect to the issue of exemplary or punitive damages, any evidence to the jury regarding the defendant's financial affairs or net worth unless the judge first rules, outside the presence of the jury, that the plaintiff has presented a prima facie claim for exemplary or punitive damages.

(5) A defendant is guilty of oppression if he intentionally causes cruel and unjust hardship by:

(a) misuse or abuse of authority or power; or

(b) taking advantage of some weakness, disability, or misfortune of another person.

(6) (a) In cases of actual fraud or actual malice, the jury may award reasonable punitive damages after considering the circumstances of the case.

(b) In all other cases where punitive damages are awarded, punitive damages may be in an amount up to but no greater than $25,000 or 1% of the defendant's net worth, whichever is greater.

(7) In cases where punitive damages may be awarded, the jury shall not be instructed, informed, or advised in any manner as to the limitations on the amount of exemplary or punitive damages as set forth in subsection (6)(b)"; and inserted (6) through (8).

Cross-References

State or other governmental entity immune from exemplary and punitive damages, 2-9-105.

Insurance coverage of punitive damages, 33-15-317.

27-1-222. Exemplary damages for inhumane injuries to animals. For wrongful injuries to animals, being subjects of property, committed willfully or by gross negligence in disregard of humanity, exemplary damages may be given.

History: En. Sec. 4337, Civ. C. 1895; re-en. Sec. 6075, Rev. C. 1907; re-en. Sec. 8693, R.C.M. 1921; Cal. Civ. C. Sec. 3340; Field Civ. C. Sec. 1867; re-en. Sec. 8693, R.C.M. 1935; R.C.M. 1947; 17-408.

27-1-223. Damages for injuries or death inflicted in a duel. If any person slays or permanently disables another person in a duel in this state, he must provide for the maintenance of the spouse and minor children of the person slain or permanently disabled in such manner and at such cost, either by aggregate compensation in damages to each or by a monthly, quarterly, or annual allowance, as is determined by the court and he is liable for and must pay all debts of the person slain or permanently disabled.

History: Ap. p. Sec. 4353, Civ. C. 1895; re-en. Sec. 6079, Rev. C. 1907; re-en. Sec. 8697, R.C.M. 1921; Cal. Civ. C. Sec. 3347; re-en. Sec. 8697, R.C.M. 1935; amd. Sec. 11, Ch. 535, L. 1975; Sec. 17-504, R.C.M. 1947; Ap. p. Sec. 4354, Civ. C. 1895; re-en. Sec. 6080, Rev. C. 1907; re-en. Sec. 8698, R.C.M. 1921; Cal. Civ. C. Sec. 3348; re-en. Sec. 8698, R.C.M. 1935; Sec. 17-505, R.C.M. 1947; R.C.M. 1947, 17-504, 17-505; amd. Sec. 2, Ch. 12, L. 1979.

Part 3

Measure of Damages

Part Cross-References

Interest on torts, 27-1-210.

27-1-301. Prescribed damages exclusive of exemplary damages and interest. The damages prescribed by 27-1-204, 27-1-222, 27-1-223, and this part are exclusive of exemplary damages and interest except where those are expressly mentioned.

History: En. Sec. 4364, Civ. C. 1895; re-en. Sec. 6085, Rev. C. 1907; re-en. Sec. 8703, R.C.M. 1921; Cal. Civ. C. Sec. 3357; Field Civ. C. Sec. 1876; re-en. Sec. 8703, R.C.M. 1935; R.C.M. 1947, 17-605.

27-1-302. Damages to be reasonable. Damages must in all cases be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages contrary to substantial justice, no more than reasonable damages can be recovered.

History: En. Sec. 4366, Civ. C. 1895; re-en. Sec. 6087, Rev. C. 1907; re-en. Sec. 8705, R.C.M. 1921; Cal. Civ. C. Sec. 3359; Field. Civ. C. Sec. 1878; re-en. Sec. 8705, R.C.M. 1935; R.C.M. 1947, 17-607.

Cross-References

Remedy for every wrong, 1-3-214.

Relief from forfeiture, 28-1-104.

When provision fixing liquidated damages valid, 28-2-721.

27-1-303. Limitation of damages for breach of obligation. No person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides unless a greater recovery is specified by statute.

History: En. Sec. 4365, Civ. C. 1895; re-en. Sec. 6086, Rev. C. 1907; re-en. Sec. 8704, R.C.M. 1921; Cal. Civ. C. Sec. 3358; Field. Civ. C. Sec. 1877; re-en. Sec. 8704, R.C.M. 1935; R.C.M. 1947, 17-606; amd. Sec. 3, Ch. 12, L. 1979.

27-1-304. Value of written instrument. For the purpose of estimating damages, the value of an instrument in writing is presumed to be equal to that of the property to which it entitles the owner.

History: En. Sec. 4363, Civ. C. 1895; re-en. Sec. 6084, Rev. C. 1907; re-en. Sec. 8702, R.C.M. 1921; Cal. Civ. C. Sec. 3356; Based on Field. Civ. C. Sec. 1875; re-en. Sec. 8702, R.C.M. 1935; R.C.M. 1947, 17-604.

27-1-305. Property of peculiar value. Where a certain property has a peculiar value to a person recovering damages for deprivation thereof or injury thereto, that may be deemed to be its value against one who had notice thereof before incurring a liability to damages in respect thereof or against a willful wrongdoer.

History: En. Sec. 4362, Civ. C. 1895; re-en. Sec. 6083, Rev. C. 1907; re-en. Sec. 8701, R.C.M. 1921; Cal. Civ. C. Sec. 3355; Field Civ. C. Sec. 1874; re-en. Sec. 8701, R.C.M. 1935; R.C.M. 1947, 17-603.

27-1-306. When replacement value to be allowed. The measure of damages in a case in which the cost of repairing a motor vehicle exceeds its value shall be the actual replacement value of the motor vehicle rather than its "book value". Actual replacement value is the actual cash value of the motor vehicle immediately prior to the damage.

History: En. Sec. 1, Ch. 320, L. 1981.

27-1-307. Definitions. As used in 27-1-307 and 27-1-308:

(1) "Collateral source" means a payment for something that is later included in a tort award and which is made to or for the benefit of a plaintiff or is otherwise available to the plaintiff:

(a) for medical expenses and disability payments under the federal Social Security Act, any federal, state, or local income disability act, or any other public program;

(b) under any health, sickness, or income disability insurance or automobile accident insurance that provides health benefits or income disability coverage, and any other similar insurance benefits available to the plaintiff, except life insurance;

(c) under any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except gifts or gratuitous contributions or assistance;

(d) any contractual or voluntary wage continuation plan provided by an employer or other system intended to provide wages during a period of disability; and

(e) any other source, except the assets of the plaintiff or of his immediate family if he is obligated to repay a member of his immediate family.

(2) "Person" includes individuals, corporations, associations, societies, firms, partnerships, joint stock companies, government entities, political subdivisions, and any other entity or aggregate of individuals.

(3) (a) "Plaintiff" means a person who alleges that he sustained bodily injury, or on whose behalf recovery for bodily injury or death is sought, or who would have a beneficial, legal, or equitable interest in a recovery.

(b) The term includes:

(i) a legal representative;

(ii) a person with a wrongful death or surviving cause of action;

(iii) a person seeking recovery on a claim for loss of consortium, society, assistance, companionship, or services; and

(iv) any other person whose right of recovery or whose claim or status is derivative of one who has sustained bodily injury or death.

History: **En. Sec. 1, Ch. 628, L. 1987.**

27-1-308. Collateral source reductions in actions arising from bodily injury or death — subrogation rights. (1) In an action arising from bodily injury or death when the total award against all defendants is in excess of $50,000 and the plaintiff will be fully compensated for his damages, exclusive of court costs and attorney fees, a plaintiff's recovery must be reduced by any amount paid or payable from a collateral source that does not have a subrogation right.

(2) Before an insurance policy payment is used to reduce an award under subsection (1), the following amounts must be deducted from the amount of the insurance policy payment:

(a) the amount the plaintiff paid for the 5 years prior to the date of injury;

(b) the amount the plaintiff paid from date of injury to date of judgment; and

(c) the present value of the amount the plaintiff is thereafter obligated to pay to keep the policy in force for the period for which any reduction of an award is made pursuant to subsection (3).

(3) The jury shall determine its award without consideration of any collateral sources. After the jury determines its award, reduction of the award must be made by the trial judge at a hearing and upon a separate submission of evidence relevant to the existence and amount of collateral sources. Evidence is admissible at the hearing to show that the plaintiff has been or may be reimbursed from a collateral source that does not have a subrogation right. If the trial judge finds that, at the time of hearing, it is not reasonably determinable whether or in what amount a benefit from such a collateral source will be payable, he shall:

(a) order any person against whom an award was rendered and who claims a deduction under this section to make a deposit into court of the disputed amount, at interest; and

(b) reduce the award by the amount deposited. The amount deposited and any interest thereon are subject to the further order of the court, pursuant to the requirements of this section.

(4) Except for subrogation rights specifically granted by state or federal law, there is no right to subrogation for any amount paid or payable to a

plaintiff from a collateral source if an award is reduced by that amount under subsection (1).

History: **En. Sec. 2, Ch. 628, L. 1987.**

27-1-309 reserved.

27-1-310. Damages for emotional or mental distress prohibited in contract actions — exception. In an action for breach of an obligation or duty arising from contract, recovery is prohibited for emotional or mental distress, except in those actions involving actual physical injury to the plaintiff. Emotional or mental distress, as used in this section, includes mental anguish or suffering, sorrow, grief, fright, shame, embarrassment, humiliation, anger, chagrin, disappointment, or worry.

History: **En. Sec. 1, Ch. 488, L. 1987.**

27-1-311. Breach of contract. For the breach of an obligation arising from contract, the measure of damages, except when otherwise expressly provided by this code, is the amount which will compensate the party aggrieved for all the detriment which was proximately caused thereby or in the ordinary course of things would be likely to result therefrom. Damages which are not clearly ascertainable in both their nature and origin cannot be recovered for a breach of contract.

History: **Ap. p. Sec. 4300, Civ. C. 1895; re-en. Sec. 6048, Rev. C. 1907; re-en. Sec. 8667, R.C.M. 1921; Cal. Civ. C. Sec. 3300; Based on Field Civ. C. Sec. 1840; re-en. Sec. 8667, R.C.M. 1935; Sec. 17-301, R.C.M. 1947; Ap. p. Sec. 4301, Civ. C. 1895; re-en. Sec. 6049, Rev. C. 1907; re-en. Sec. 8668, R.C.M. 1921; Cal. Civ. C. Sec. 3301; Field Civ. C. Sec. 1841; re-en. Sec. 8668, R.C.M. 1935; Sec. 17-302, R.C.M. 1947; R.C.M. 1947, 17-301, 17-302; amd. Sec. 4, Ch. 12, L. 1979.**

Cross-References

Remedies for contracts not written in plain language, 30-14-1111, 30-14-1112.

27-1-312. Breach of obligation to pay money. The detriment caused by the breach of an obligation to pay money only is deemed to be the amount due by the terms of the obligation with interest thereon.

History: **En. Sec. 4302, Civ. C. 1895; re-en. Sec. 6050, Rev. C. 1907; re-en. Sec. 8669, R.C.M. 1921; Cal. Civ. C. Sec. 3302; Field Civ. C. Sec. 1842; re-en. Sec. 8669, R.C.M. 1935; R.C.M. 1947, 17-303.**

Cross-References

Treble damages for issuing bad check, 27-1-717.

27-1-313. Breach of warranty of agent's authority. The detriment caused by the breach of a warranty of an agent's authority is deemed to be the amount which could have been recovered and collected from his principal if the warranty had been complied with and the reasonable expenses of legal proceedings taken in good faith to enforce the act of the agent against his principal.

History: **En. Sec. 4318, Civ. C. 1895; re-en. Sec. 6066, Rev. C. 1907; re-en. Sec. 8684, R.C.M. 1921; Cal. Civ. C. Sec. 3318; Field Civ. C. Sec. 1858; re-en. Sec. 8684, R.C.M. 1935; R.C.M. 1947, 17-318.**

Cross-References

Authority of agent, Title 28, ch. 10, part 4.

27-1-314. Breach of agreement to convey real property. The detriment caused by the breach of an agreement to convey an estate in real property is considered to be the price paid and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon. If the breach was in bad faith and the agreed price was less than the value of the estate, the detriment is also considered to include the difference between the agreed price and the value of the estate at the time of the breach and the expenses properly incurred in preparing to enter upon the land.

History: En. Sec. 4306, Civ. C. 1895; re-en. Sec. 6054, Rev. C. 1907; re-en. Sec. 8672, R.C.M. 1921; Cal. Civ. C. Sec. 3306; Field Civ. C. Sec. 1846; re-en. Sec. 8672, R.C.M. 1935; R.C.M. 1947, 17-306; amd. Sec. 5, Ch. 12, L. 1979.

27-1-315. Breach of agreement to buy real property. The detriment caused by the breach of an agreement to purchase an estate in real property is deemed to be the excess, if any, of the amount which would have been due to the seller under the contract over the value of the property to him.

History: En. Sec. 4307, Civ. C. 1895; re-en. Sec. 6055, Rev. C. 1907; re-en. Sec. 8673, R.C.M. 1921; Cal. Civ. C. Sec. 3307; Field Civ. C. Sec. 1847; re-en. Sec. 8673, R.C.M. 1935; R.C.M. 1947, 17-307.

27-1-316. Breach of covenants in grants of estates in real property. (1) The detriment caused by the breach of a covenant of seizin, of right to convey, of warranty, or of quiet enjoyment in a grant of an estate in real property is deemed to be:

(a) the price paid to the grantor or, if the breach is partial only, such proportion of the price as the value of the property affected by the breach bore at the time of the grant to the value of the whole property;

(b) interest thereon for the time during which the grantee derived no benefit from the property, not exceeding 5 years;

(c) any expenses properly incurred by the covenantee in defending his possession.

(2) The detriment caused by the breach of a covenant against encumbrances in a grant of an estate in real property is deemed to be the amount which has been actually expended by the covenantee in extinguishing either the principal or interest thereof, not exceeding in the former case a proportion of the price paid to the grantor equivalent to the relative value at the time of the grant of the property affected by the breach as compared with the whole or, in the latter case, interest on a like amount.

History: (1)En. Sec. 4304, Civ. C. 1895; re-en. Sec. 6052, Rev. C. 1907; re-en. Sec. 8670, R.C.M. 1921; Cal. Civ. C. Sec. 3304; Based on Field Civ. C. Sec. 1844; re-en. Sec. 8670, R.C.M. 1935; Sec. 17-304, R.C.M. 1947; (2)En. Sec. 4305, Civ. C. 1895; re-en. Sec. 6053, Rev. C. 1907; re-en. Sec. 8671, R.C.M. 1921; Cal. Civ. C. Sec. 3305; Field Civ. C. Sec. 1845; re-en. Sec. 8671, R.C.M. 1935; Sec. 17-305, R.C.M. 1947; R.C.M. 1947, 17-304, 17-305.

27-1-317. Breach of obligation other than contract. For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

History: En. Sec. 4330, Civ. C. 1895; re-en. Sec. 6068, Rev. C. 1907; re-en. Sec. 8686, R.C.M. 1921; Cal. Civ. C. Sec. 3333; Field. Civ. C. Sec. 1860; re-en. Sec. 8686, R.C.M. 1935; R.C.M. 1947, 17-401.

27-1-318. Wrongful occupation of real property. The detriment caused by the wrongful occupation of real property in cases not otherwise provided for in this code is deemed to be the value of the use of the property for the time of such occupation, not exceeding 5 years next preceding the commencement of the action or proceeding to enforce the right to damages, and the costs, if any, of recovering the possession.

History: En. Sec. 4331, Civ. C. 1895; re-en. Sec. 6069, Rev. C. 1907; re-en. Sec. 8687, R.C.M. 1921; Cal. Civ. C. Sec. 3334; Based on Field Civ. C. Sec. 1861; re-en. Sec. 8687, R.C.M. 1935; R.C.M. 1947, 17-402.

27-1-319. Willful holding over of real property. For willfully holding over real property by a person who entered upon the same as guardian or trustee for a minor or by right of an estate terminable with any life or lives, after the termination of the trust or particular estate, without the consent of the party immediately entitled after such termination, the measure of damages is the value of the profits received during such holding over.

History: En. Sec. 4332, Civ. C. 1895; re-en. Sec. 6070, Rev. C. 1907; re-en. Sec. 8688, R.C.M. 1921; Cal. Civ. C. Sec. 3335; Field. Civ. C. Sec. 1862; re-en. Sec. 8688, R.C.M. 1935; R.C.M. 1947, 17-403; amd. Sec. 3, Ch. 2, L. 1983.

27-1-320. Conversion of personal property. (1) The detriment caused by the wrongful conversion of personal property is presumed to be:

(a) the value of the property at the time of its conversion with the interest from that time or, when the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict without interest, at the option of the injured party; and

(b) a fair compensation for the time and money properly expended in pursuit of the property.

(2) The presumption declared by subsection (1) cannot be repelled in favor of one whose possession was wrongful from the beginning by his subsequent application of the property to the benefit of the owner without such owner's consent.

History: (1)En. Sec. 4333, Civ. C. 1895; re-en. Sec. 6071, Rev. C. 1907; re-en. Sec. 8689, R.C.M. 1921; Cal. Civ. C. Sec. 3336; Field Civ. C. Sec. 1863; re-en. Sec. 8689, R.C.M. 1935; Sec. 17-404, R.C.M. 1947; (2)En. Sec. 4334, Civ. C. 1895; re-en. Sec. 6072, Rev. C. 1907; re-en. Sec. 8690, R.C.M. 1921; Cal. Civ. C. Sec. 3337; Field. Civ. C. Sec. 1864; re-en. Sec. 8690, R.C.M. 1935; Sec. 17-405, R.C.M. 1947; R.C.M. 1947, 17-404, 17-405; amd. Sec. 6, Ch. 12, L. 1979.

27-1-321. Conversion of personal property — damages of lienholder. One having a mere lien on personal property cannot recover greater damages for its conversion, from one having a right thereto superior to his after his lien is discharged, than the amount secured by the lien and the compensation allowed by 27-1-320(1) for the loss of time and expenses.

History: En. Sec. 4335, Civ. C. 1895; re-en. Sec. 6073, Rev. C. 1907; re-en. Sec. 8691, R.C.M. 1921; Cal. Civ. C. Sec. 3338; Field Civ. C. Sec. 1865; re-en. Sec. 8691, R.C.M. 1935; R.C.M. 1947, 17-406.

27-1-322. Seduction. The damages for seduction rest in the sound discretion of the jury.

History: En. Sec. 4336, Civ. C. 1895; re-en. Sec. 6074, Rev. C. 1907; re-en. Sec. 8692, R.C.M. 1921; Cal. Civ. C. Sec. 3339; Field Civ. C. Sec. 1866; re-en. Sec. 8692, R.C.M. 1935; R.C.M. 1947, 17-407.

Cross-References
Who may sue for whose seduction, 27-1-514.
Time for commencement of action 2 years, 27-2-204.

27-1-323. Wrongful death. In every action under 27-1-513, such damages may be given as under all the circumstances of the case may be just.

History: **En. Sec. 1, p. 561, Cod. Stat. 1871; en. Sec. 14, p. 42, L. 1877; re-en. Sec. 14, 1st Div. Rev. Stat. 1879; re-en. Sec. 14, 1st Div. Comp. Stat. 1887; re-en. Sec. 579, C. Civ. Proc. 1895; re-en. Sec. 6486, Rev. C. 1907; re-en. Sec. 9076, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 377; re-en. Sec. 9076, R.C.M. 1935; R.C.M. 1947, 93-2810(part); amd. Sec. 1, Ch. 449, L. 1987.**

Compiler's Comments
1987 Amendment: After "under" deleted reference to 27-1-512.

Part 4

Specific and Preventive Relief

27-1-401. When specific or preventive relief permitted. Specific or preventive relief may be given in the cases specified in this part and Title 28, chapter 2, parts 16 and 17, and in no others. Neither specific nor preventive relief can be granted to enforce a penal law, except in a case of nuisance, or to enforce the penalty or forfeiture in any case.

History: **Ap. p. Sec. 4380, Civ. C. 1895; re-en. Sec. 6089, Rev. C. 1907; re-en. Sec. 8707, R.C.M. 1921; Cal. Civ. C. Sec. 3366; Field Civ. C. Sec. 1880; re-en. Sec. 8707, R.C.M. 1935; Sec. 17-701, R.C.M. 1947; Ap. p. Sec. 4383, Civ. C. 1895; re-en. Sec. 6092, Rev. C. 1907; re-en. Sec. 8710, R.C.M. 1921; Cal. Civ. C. Sec. 3369; Field Civ. C. Sec. 1883; re-en. Sec. 8710, R.C.M. 1935; Sec. 17-704, R.C.M. 1947; R.C.M. 1947, 17-701, 17-704.**

Cross-References
U.C.C. — buyer's remedies in general, 30-2-711.
U.C.C. — buyer's right to specific performance, 30-2-716.
Injunctive relief against unlawful termination or substantial alteration of farm implements dealership agreements, Title 30, ch. 11, part 8.

27-1-402. How specific relief given. Specific relief is given by:

(1) taking possession of a thing and delivering it to a claimant;

(2) compelling the party himself to do that which ought to be done; or

(3) declaring and determining the rights of parties otherwise than by an award of damages.

History: **En. Sec. 4381, Civ. C. 1895; re-en. Sec. 6090, Rev. C. 1907; re-en. Sec. 8708, R.C.M. 1921; Cal. Civ. C. Sec. 3367; Field Civ. C. Sec. 1881; re-en. Sec. 8708, R.C.M. 1935; R.C.M. 1947, 17-702.**

Cross-References
What ought to have been done, 1-3-220.

27-1-403. How preventive relief given. Preventive relief is given by prohibiting a party from doing that which ought not to be done. Preventive relief is granted by injunction, provisional or final.

History: **Ap. p. Sec. 4382, Civ. C. 1895; re-en. Sec. 6091, Rev. C. 1907; re-en. Sec. 8709, R.C.M. 1921; Cal. Civ. C. Sec. 3368; Field. Civ. C. Sec. 1882; re-en. Sec. 8709, R.C.M. 1935; Sec. 17-703, R.C.M. 1947; Ap. p. Sec. 4460, Civ. C. 1895; re-en. Sec. 6118, Rev. C. 1907; re-en. Sec. 8736, R.C.M. 1921; Cal. Civ. C. Sec. 3420; Field Civ. C. Sec. 1909; re-en. Sec. 8736, R.C.M. 1935; Sec. 17-1101, R.C.M. 1947; R.C.M. 1947, 17-703, 17-1101.**

Cross-References
Injunctions, Title 27, ch. 19.

27-1-404 through 27-1-410 reserved.

27-1-411. When specific performance of an obligation may be compelled. Except as otherwise provided in this part and Title 28, chapter 2, parts 16 and 17, the specific performance of an obligation may be compelled when:

(1) the act to be done is in the performance, wholly or partly, of an express trust;

(2) the act to be done is such that pecuniary compensation for its nonperformance would not afford adequate relief;

(3) it would be extremely difficult to ascertain the actual damage caused by the nonperformance of the act to be done; or

(4) it has been expressly agreed in writing, between the parties to the contract, that specific performance thereof may be required by either party or that damages shall not be considered adequate relief.

History: En. Sec. 4410, Civ. C. 1895; re-en. Sec. 6096, Rev. C. 1907; re-en. Sec. 8714, R.C.M. 1921; Cal. Civ. C. Sec. 3384; Field Civ. C. Sec. 1887; re-en. Sec. 8714, R.C.M. 1935; R.C.M. 1947, 17-801.

Cross-References

U.C.C. — buyer's rights to specific performance or recovery of goods, 30-2-716.

27-1-412. Obligations which cannot be specifically enforced. The following obligations cannot be specifically enforced:

(1) an obligation to render personal service or to employ another therein;

(2) an agreement to marry or live with another;

(3) an agreement to perform an act which the party has not power to perform lawfully when required to do so;

(4) an agreement to procure the act or consent of the spouse of the contracting party or of any other third person; or

(5) an agreement the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

History: En. Sec. 4416, Civ. C. 1895; re-en. Sec. 6102, Rev. C. 1907; re-en. Sec. 8720, R.C.M. 1921; Cal. Civ. C. Sec. 3390; Field Civ. C. Sec. 1893; re-en. Sec. 8720, R.C.M. 1935; amd. Sec. 12, Ch. 535, L. 1975; R.C.M. 1947, 17-807; amd. Sec. 23, Ch. 684, L. 1985.

Cross-References

Cause of action for breach of promise to marry abolished, 27-1-602.

Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

27-1-413. Specific performance not to be oppressive. Specific performance cannot be compelled when it would operate more harshly upon the party required to perform than its refusal would operate upon the party seeking it.

History: En. Sec. 4419, Civ. C. 1895; re-en. Sec. 6105, Rev. C. 1907; re-en. Sec. 8723, R.C.M. 1921; Field Civ. C. Sec. 1896; re-en. Sec. 8723, R.C.M. 1935; R.C.M. 1947, 17-810.

27-1-414. Right to specific performance to be mutual. (1) When either of the parties to an obligation is entitled to a specific performance thereof according to the provisions of 27-1-411, the other party is also entitled to it, though not within those provisions.

(2) Neither party to any obligation can be compelled specifically to perform it unless the other party thereto has performed or is compellable specifically to perform everything to which the former is entitled under the same

obligation, either completely or nearly so, together with full compensation for any want of entire performance.

History: (1)En. Sec. 4411, Civ. C. 1895; re-en. Sec. 6097, Rev. C. 1907; re-en. Sec. 8715, R.C.M. 1921; Cal. Civ. C. Sec. 3385; Field Civ. C. Sec. 1888; re-en. Sec. 8715, R.C.M. 1935; Sec. 17-802, R.C.M. 1947; (2)En. Sec. 4412, Civ. C. 1895; re-en. Sec. 6098, Rev. C. 1907; re-en. Sec. 8716, R.C.M. 1921; Cal. Civ. C. Sec. 3386; Field Civ. C. Sec. 1889; re-en. Sec. 8716, R.C.M. 1935; Sec. 17-803, R.C.M. 1947; R.C.M. 1947, 17-802, 17-803.

27-1-415. Parties who cannot be compelled to perform. Specific performance cannot be enforced against a party to a contract in any of the following cases:

(1) if he has not received an adequate consideration for the contract;

(2) if it is not, as to him, just and reasonable;

(3) if his assent was obtained by the misrepresentations, concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract or by any promise of such party which has not been substantially fulfilled; or

(4) if his assent was given under the influence of mistake, misapprehension, or surprise, except that where the contract provides for compensation in case of mistake, a mistake within the scope of such provision may be compensated for and the contract specifically enforced in other respects if proper to be so enforced.

History: En. Sec. 4417, Civ. C. 1895; re-en. Sec. 6103, Rev. C. 1907; re-en. Sec. 8721, R.C.M. 1921; Cal. Civ. C. Sec. 3391; Field Civ. C. Sec. 1894; re-en. Sec. 8721, R.C.M. 1935; R.C.M. 1947, 17-808.

27-1-416. Parties who cannot obtain specific performance. Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his part to the obligation of the other party except where his failure to perform is only partial and either entirely immaterial or capable of being fully compensated, in which case specific performance may be compelled upon full compensation being made for the default.

History: En. Sec. 4418, Civ. C. 1895; re-en. Sec. 6104, Rev. C. 1907; re-en. Sec. 8722, R.C.M. 1921; Cal. Civ. C. Sec. 3392; Field Civ. C. Sec. 1895; re-en. Sec. 8722, R.C.M. 1935; R.C.M. 1947, 17-809.

27-1-417. Specific performance by party who signed when other party did not sign contract. A party who has signed a written contract may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed or offers to perform it on his part and the case is otherwise proper for enforcing specific performance.

History: En. Sec. 4414, Civ. C. 1895; re-en. Sec. 6100, Rev. C. 1907; re-en. Sec. 8718, R.C.M. 1921; Cal. Civ. C. Sec. 3388; Field. Civ. C. Sec. 1891; re-en. Sec. 8718, R.C.M. 1935; R.C.M. 1947, 17-805.

27-1-418. Liquidation of damages not a bar to specific performance. A contract otherwise proper to be specifically enforced may be thus enforced though a penalty is imposed or the damages are liquidated for its breach and the party in default is willing to pay the same.

History: En. Sec. 4415, Civ. C. 1895; re-en. Sec. 6101, Rev. C. 1907; re-en. Sec. 8719, R.C.M. 1921; Cal. Civ. C. Sec. 3389; Field Civ. C. Sec. 1892; re-en. Sec. 8719, R.C.M. 1935; R.C.M. 1947, 17-806.

27-1-419. Specific performance of agreement to transfer property — distinction between real and personal property. It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation and that the breach of an agreement to transfer personal property can be thus relieved.

History: En. Sec. 4413, Civ. C. 1895; re-en. Sec. 6099, Rev. C. 1907; re-en. Sec. 8717, R.C.M. 1921; Cal. Civ. C. Sec. 3387; Field Civ. C. Sec. 1890; re-en. Sec. 8717, R.C.M. 1935; R.C.M. 1947, 17-804.

27-1-420. No specific performance of agreement to buy property when title not clear. An agreement for the sale of property cannot be specifically enforced in favor of a seller who cannot give to the buyer a title free from reasonable doubt.

History: En. Sec. 4420, Civ. C. 1895; re-en. Sec. 6106, Rev. C. 1907; re-en. Sec. 8724, R.C.M. 1921; Cal. Civ. C. Sec. 3394; Field Civ. C. Sec. 1897; re-en. Sec. 8724, R.C.M. 1935; R.C.M. 1947, 17-811.

27-1-421. Compelling performance of successor in interest in title — obligations respecting real property. Whenever an obligation in respect to real property would be specifically enforced against a particular person, it may be in like manner enforced against any other person claiming under him by a title created subsequently to the obligation except a purchaser or encumbrancer in good faith and for value, and except that any such person may exonerate himself by conveying all his estate to the person entitled to enforce the obligation.

History: En. Sec. 4421, Civ. C. 1895; re-en. Sec. 6107, Rev. C. 1907; re-en. Sec. 8725, R.C.M. 1921; Cal. Civ. C. Sec. 3395; Field Civ. C. Sec. 1898; re-en. Sec. 8725, R.C.M. 1935; R.C.M. 1947, 17-812.

27-1-422 through 27-1-430 reserved.

27-1-431. Judgment for possession of or title to real property. A person entitled to specific real property, by reason either of a perfected title or of a claim to title which ought to be perfected, may recover the same in the manner prescribed by this code, either by a judgment for its possession to be executed by the sheriff or by a judgment requiring the other party to perfect the title and to deliver possession of the property.

History: En. Sec. 4390, Civ. C. 1895; re-en. Sec. 6093, Rev. C. 1907; re-en. Sec. 8711, R.C.M. 1921; Cal. Civ. C. Sec. 3375; Field. Civ. C. Sec. 1884; re-en. Sec. 8711, R.C.M. 1935; R.C.M. 1947, 17-705.

Cross-References

Execution of judgment, Title 25, ch. 13.

27-1-432. Judgment for delivery of personal property. A person entitled to the immediate possession of specific personal property may recover the same in the manner provided by this code. Any person having the possession or control of a particular article of personal property of which he is not the owner may be compelled specifically to deliver it to the person entitled to its immediate possession.

History: Ap. p. Sec. 4400, Civ. C. 1895; re-en. Sec. 6094, Rev. C. 1907; re-en. Sec. 8712, R.C.M. 1921; Cal. Civ. C. Sec. 3379; Field Civ. C. Sec. 1885; re-en. Sec. 8712, R.C.M. 1935; Sec. 17-706, R.C.M. 1947; Ap. p. Sec. 4401, Civ. C. 1895; re-en. Sec. 6095, Rev. C. 1907; re-en. Sec. 8713, R.C.M. 1921; Cal. Civ. C. Sec. 3380; Based on Field Civ. C. Sec. 1886; re-en. Sec. 8713, R.C.M. 1935; Sec. 17-707, R.C.M. 1947; R.C.M. 1947, 17-706, 17-707.

Cross-References
Execution of judgment, Title 25, ch. 13.

27-1-433. Cancellation of written instrument. (1) A written instrument in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable may, upon his application, be so adjudged and ordered to be delivered up or canceled.

(2) An instrument the invalidity of which is apparent upon its face or upon the face of another instrument which is necessary to the use of the former in evidence is not to be deemed capable of causing injury within the provisions of subsection (1).

(3) Where an instrument is evidence of different rights or obligations, it may be canceled in part and allowed to stand for the residue.

History: (1)En. Sec. 4450, Civ. C. 1895; re-en. Sec. 6115, Rev. C. 1907; re-en. Sec. 8733, R.C.M. 1921; Cal. Civ. C. Sec. 3412; Field Civ. C. Sec. 1906; re-en. Sec. 8733, R.C.M. 1935; Sec. 17-1001, R.C.M. 1947; (2)En. Sec. 4451, Civ. C. 1895; re-en. Sec. 6116, Rev. C. 1907; re-en. Sec. 8734, R.C.M. 1921; Cal. Civ. C. Sec. 3413; Field Civ. C. Sec. 1907; re-en. Sec. 8734, R.C.M. 1935; Sec. 17-1002, R.C.M. 1947; (3)En. Sec. 4452, Civ. C. 1895; re-en. Sec. 6117, Rev. C. 1907; re-en. Sec. 8735, R.C.M. 1921; Cal. Civ. C. Sec. 3414; Field Civ. C. Sec. 1908; re-en. Sec. 8735, R.C.M. 1935; Sec. 17-1003, R.C.M. 1947; R.C.M. 1947, 17-1001, 17-1002, 17-1003.

Part 5

Right to Bring Action or Assert Defense

27-1-501. Survival of cause of action or defense — death or disability or transfer of interest. (1) An action, cause of action, or defense does not abate because of the death or disability of a party or the transfer of any interest therein, but whenever the cause of action or defense arose in favor of such party prior to his death or disability or transfer of interest therein, it survives and may be maintained by his representatives or successors in interest. If the action has not been begun or defense interposed, the action may be begun or defense interposed in the name of his representatives or successors in interest. If the action has been begun or defense interposed, the action or proceeding may be continued as provided in Rule 25, M.R.Civ.P.

(2) Actions brought under this section and 27-1-513 must be combined in one legal action and any element of damages may be recovered only once.

History: En. Sec. 16, p. 45, Bannack Stat.; re-en. Sec. 16, p. 137, L. 1867; re-en. Sec. 16, p. 29, Cod. Stat. 1871; amd. Sec. 22, p. 43, L. 1877; re-en. Sec. 22, 1st Div. Rev. Stat. 1879; en. Sec. 1, p. 98, L. 1883; re-en. Sec. 22, 1st Div. Comp. Stat. 1887; amd. Sec. 587, C. Civ. Proc. 1895; re-en. Sec. 6494, Rev. C. 1907; re-en. Sec. 9086, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 385; re-en. Sec. 9086, R.C.M. 1935; repealed Sec. 84, Ch. 13, L. 1961; reinstated Sec. 2, Ch. 14, L. 1963; R.C.M. 1947, 93-2824; amd. Sec. 7, Ch. 12, L. 1979; amd. Sec. 2, Ch. 449, L. 1987.

Compiler's Comments
1987 Amendment: Inserted (2).

Cross-References
Substitution of parties — death, Rule 25(a), M.R.Civ.P. (see Title 25, ch. 20).

27-1-502. Survival of counterclaim — death or assignment. When cross-demands have existed between persons under such circumstances that if one had brought an action against the other a counterclaim could have been set up, the two demands shall be deemed compensated so far as they equal each other and neither can be deprived of the benefit thereof by the assignment or death of the other.

History: En. Sec. 48, p. 52, Bannack Stat.; re-en. Sec. 48, p. 143, L. 1867; re-en. Sec. 58, p. 39, Cod. Stat. 1871; re-en. Sec. 89, p. 61, L. 1877; re-en. Sec. 89, 1st Div. Rev. Stat. 1879; re-en. Sec. 91, 1st Div. Comp. Stat. 1887; amd. Sec. 698, C. Civ. Proc. 1895; re-en. Sec. 6548, Rev. C. 1907; re-en. Sec. 9145, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 440; re-en. Sec. 9145, R.C.M. 1935; R.C.M. 1947, 93-3409.

27-1-503. What defenses to action survive assignment of right to action. In the case of an assignment of a thing in action, the action by the assignee is without prejudice to any setoff or other defense existing at the time of or before notice of the assignment, but this section shall apply only to the extent not otherwise provided for in the Uniform Commercial Code.

History: En. Sec. 5, p. 44, Bannack Stat.; re-en. Sec. 5, p. 136, L. 1867; re-en. Sec. 5, p. 28, Cod. Stat. 1871; re-en. Sec. 5, p. 40, L. 1877; re-en. Sec. 5, 1st Div. Rev. Stat. 1879; re-en. Sec. 5, 1st Div. Comp. Stat. 1887; re-en. Sec. 571, C. Civ. Proc. 1895; re-en. Sec. 6478, Rev. C. 1907; re-en. Sec. 9068, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 368; re-en. Sec. 9068, R.C.M. 1935; amd. Sec. 11-157, Ch. 264, L. 1963; R.C.M. 1947, 93-2802.

Cross-References

Uniform Commercial Code, Title 30, ch. 1 through 9.

27-1-504 through 27-1-510 reserved.

27-1-511. Right of minor to bring civil action or other proceeding. A minor may enforce his rights by civil action or other legal proceedings in the same manner as a person of full age except that a guardian must conduct the same.

History: En. Sec. 25, Civ. C. 1895; re-en. Sec. 3599, Rev. C. 1907; re-en. Sec. 5687, R.C.M. 1921; Cal. Civ. C. Sec. 42; Field Civ. C. Sec. 25; re-en. Sec. 5687, R.C.M. 1935; R.C.M. 1947, 64-114.

Cross-References

Parties — infants or incompetent persons, Rule 17(c), M.R.Civ.P. (see Title 25, ch. 20).

When guardian necessary — how appointed, 25-31-602.

Small claims procedure — parties — representation, 25-34-105, 25-35-505.

Enforcement of minor's rights, 41-1-202.

27-1-512. Action by parent or guardian for injury to child or ward. Either parent may maintain an action for the injury to a minor child and a guardian for injury to a ward when such injury is caused by the wrongful act or neglect of another. Such action may be maintained against the person causing the injury or, if such person be employed by another person who is responsible for his conduct, also against such other person.

History: En. Sec. 11, p. 44, Bannack Stat.; amd. Sec. 11, p. 136, L. 1867; re-en. Sec. 11, p. 29, Cod. Stat. 1871; re-en. Sec. 13, p. 42, L. 1877; re-en. Sec. 13, 1st Div. Rev. Stat. 1879; re-en. Sec. 13, 1st Div. Comp. Stat. 1887; amd. Sec. 578, C. Civ. Proc. 1895; re-en. Sec. 6485, Rev. C. 1907; re-en. Sec. 9075, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 376; re-en. Sec. 9075, R.C.M. 1935; amd. Sec. 52, Ch. 535, L. 1975; R.C.M. 1947, 93-2809; amd. Sec. 3, Ch. 449, L. 1987.

Compiler's Comments

1987 Amendment: In five places following "injury" deleted "or death" and made minor changes in phraseology.

27-1-513. Action for wrongful death. When injuries to and the death of one person are caused by the wrongful act or neglect of another, the personal representative of the decedent's estate may maintain an action for damages against the person causing the death or, if such person be employed by another person who is responsible for his conduct, then also against such other person.

History: **En. Sec. 1, p. 561, Cod. Stat. 1871; en. Sec. 14, p. 42, L. 1877; re-en. Sec. 14, 1st Div. Rev. Stat. 1879; re-en. Sec. 14, 1st Div. Comp. Stat. 1887; re-en. Sec. 579, C. Civ. Proc. 1895; re-en. Sec. 6486, Rev. C. 1907; re-en. Sec. 9076, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 377; re-en. Sec. 9076, R.C.M. 1935; R.C.M. 1947, 93-2810(part); amd. Sec. 4, Ch. 449, L. 1987.**

Compiler's Comments

1987 Amendment: Near beginning, after "When", inserted "injuries to and", after "person" deleted "not being a minor", substituted "the personal representative of the decedent's estate" for "his heirs or personal representatives", and made minor change in phraseology.

Cross-References

Damages for personal injury or wrongful death not to be stated, 25-4-311.

Request for statement of damages — response, 25-4-312.

Notice to defendant when no request for statement of damages made, 25-4-313.

Permissive delivery of statement of damages with summons, 25-4-314.

27-1-514. Who may sue for whose seduction. (1) The rights of personal relations forbid the seduction of a spouse, child, orphan, or servant.

(2) Either parent may prosecute as plaintiff for the seduction of the child and the guardian for the seduction of the ward, though the child or ward be not living with or in the service of the plaintiff at the time of the seduction or afterwards and there be no loss of service.

(3) An unmarried person may prosecute as plaintiff an action for his or her own seduction and may recover therein such damages, pecuniary or exemplary, as are assessed in such person's favor.

History: **(1)En. Sec. 35, Civ. C. 1895; re-en. Sec. 3605, Rev. C. 1907; re-en. Sec. 5693, R.C.M. 1921; Cal. Civ. C. Sec. 49; Field Civ. C. Sec. 32; re-en. Sec. 5693, R.C.M. 1935; amd. Sec. 30, Ch. 535, L. 1975; Sec. 64-209, R.C.M. 1947; (2)En. Sec. 12, p. 41, L. 1877; re-en. Sec. 12, 1st Div. Rev. Stat. 1879; re-en. Sec. 12, 1st Div. Comp. Stat. 1887; re-en. Sec. 577, C. Civ. Proc. 1895; re-en. Sec. 6484, Rev. C. 1907; re-en. Sec. 9074, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 375; re-en. Sec. 9074, R.C.M. 1935; amd. Sec. 51, Ch. 535, L. 1975; Sec. 92-2808, R.C.M. 1947; (3)En. Sec. 11, p. 41, L. 1877; re-en. Sec. 11, 1st Div. Rev. Stat. 1879; re-en. Sec. 11, 1st Div. Comp. Stat. 1887; re-en. Sec. 576, C. Civ. Proc. 1895; re-en. Sec. 6483, Rev. C. 1907; re-en. Sec. 9073, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 374; re-en. Sec. 9073, R.C.M. 1935; amd. Sec. 50, Ch. 535, L. 1975; Sec. 93-2807, R.C.M. 1947; R.C.M. 1947, 64-209(3), 93-2807, 93-2808.**

Cross-References

Damages for seduction, 27-1-322.

27-1-515. Protection of personal relations — abduction. The rights of personal relations forbid:

(1) the abduction of a parent from a child;

(2) the abduction or enticement of a wife from her husband or a husband from his wife, of a child from a parent or from a guardian entitled to its custody, or of a servant from a master.

History: **En. Sec. 35, Civ. C. 1895; re-en. Sec. 3605, Rev. C. 1907; re-en. Sec. 5693, R.C.M. 1921; Cal. Civ. C. Sec. 49; Field Civ. C. Sec. 32; re-en. Sec. 5693, R.C.M. 1935; amd. Sec. 30, Ch. 535, L. 1975; R.C.M. 1947, 64-209(1), (2).**

Cross-References

Unlawful restraint, 45-5-301.

27-1-516. Injury to servant. The rights of personal relations forbid any injury to a servant which affects the servant's ability to serve the master.

History: **En. Sec. 35, Civ. C. 1895; re-en. Sec. 3605, Rev. C. 1907; re-en. Sec. 5693, R.C.M. 1921; Cal. Civ. C. Sec. 49; Field Civ. C. Sec. 32; re-en. Sec. 5693, R.C.M. 1935; amd. Sec. 30, Ch. 535, L. 1975; R.C.M. 1947, 64-209(4).**

Cross-References

Agency, Title 28, ch. 10.

Part 6

Abolition of Certain Causes of Action

Part Cross-References

Limitation on landowner liability to recreationists, 23-2-321; Title 70, ch. 16, part 3.

27-1-601. Cause of action for alienation of affections abolished. All civil causes of action for alienation of affections of husband or wife are hereby abolished.

History: **En. Sec. 1, Ch. 200, L. 1963; R.C.M. 1947, 17-1201(part).**

27-1-602. Cause of action for breach of promise abolished — right to damages for fraud and unjust enrichment preserved. All causes of action for breach of contract to marry are hereby abolished. However, where a plaintiff has suffered actual damage due to fraud or deceit or a defendant has been unjustly enriched, the plaintiff may maintain an action for fraud or deceit or unjust enrichment and recover therein only the actual damage proved or for the benefit wrongfully obtained or restitution of property wrongfully withheld where such action otherwise is maintainable under existing law.

History: **En. Sec. 2, Ch. 200, L. 1963; R.C.M. 1947, 17-1202.**

Cross-References

Obligations which cannot be specifically enforced, 27-1-412.

27-1-603. Acts within Montana not to give rise to abolished cause of action. No act done within this state after July 1, 1963, shall operate to give rise, either within or without this state, to any of the causes of action abolished by this part. No contract to marry which shall be made within this state after July 1, 1963, shall operate to give rise, either within or without this state, to any cause of action for breach thereof. It is the intention of this part to fix the effect, status, and character of such acts and contracts and to render them ineffective to support or give rise to any such causes of action within or without this state.

History: **En. Sec. 3, Ch. 200, L. 1963; R.C.M. 1947, 17-1203.**

27-1-604. Litigation and threat of litigation prohibited. Effective July 1, 1963, it shall be unlawful for any person, either as litigant or attorney, to file, cause to be filed, threaten to file, or threaten to cause to be filed in any court in this state any pleading or paper setting forth or seeking to recover upon any cause of action abolished or barred by this part, whether such cause of action arose within or without this state.

History: **En. Sec. 4, Ch. 200, L. 1963; R.C.M. 1947, 17-1204.**

27-1-605. Agreements settling or compromising abolished causes of action. (1) All contracts and instruments of every kind which, after July 1, 1963, may be executed within this state in payment, satisfaction, settlement, or compromise of any claim or cause of action abolished or barred by this part, whether such claim or cause of action arose within or without this state, are hereby declared to be contrary to the public policy of this state and absolutely void.

(2) It shall be unlawful to:

(a) cause, induce, or procure any person to execute such a contract or instrument;

(b) cause, induce, or procure any person to give, pay, transfer, or deliver any money or thing of value in payment, satisfaction, settlement, or compromise of any such claim or cause of action;

(c) receive, take, or accept any such money or thing of value in such payment, satisfaction, settlement, or compromise; or

(d) commence or cause to be commenced, either as litigant or attorney, in any court of this state any proceeding or action seeking to enforce or recover upon any such contract or instrument knowing it to be such, whether the same shall have been executed within or without this state.

(3) However, this section shall not apply to the payment, satisfaction, settlement, or compromise of any causes of action which are not abolished or barred by this part or any contracts or instruments heretofore executed or to the bona fide holder in due course of any negotiable instrument which may be executed after July 1, 1963.

History: En. Sec. 5, Ch. 200, L. 1963; R.C.M. 1947, 17-1205.

27-1-606. Criminal penalty. Any person who violates any of the provisions of this part is punishable upon conviction therefor by a fine of not less than $100 or more than $1,000 or imprisonment for a term of not less than 1 year or more than 5 years, in the discretion of the court.

History: En. Sec. 6, Ch. 200, L. 1963; R.C.M. 1947, 17-1206; amd. Sec. 8, Ch. 12, L. 1979.

Part 7

Liability

Part Cross-References

Weed management district liability restrictions, 7-22-2111.

Limitation on landowner liability to recreationists, 23-2-321; Title 70, ch. 16, part 3.

Responsibility and liability of snowmobile area operators, 23-2-651 through 23-2-656.

27-1-701. Liability for negligence as well as willful acts. Except as otherwise provided by law, everyone is responsible not only for the results of his willful acts but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person except so far as the latter has willfully or by want of ordinary care brought the injury upon himself.

History: En. Sec. 2296, Civ. C. 1895; re-en. Sec. 5077, Rev. C. 1907; re-en. Sec. 7579, R.C.M. 1921; Cal. Civ. C. Sec. 1714; Based on Field Civ. C. Sec. 853; re-en. Sec. 7579, R.C.M. 1935; R.C.M. 1947, 58-607; amd. Sec. 9, Ch. 12, L. 1979; amd. Sec. 2, Ch. 209, L. 1987; amd. Sec.

2, Ch. 397, L. 1987; amd. Sec. 2, Ch. 437, L. 1987; amd. Sec. 7, Ch. 440, L. 1987; amd. Sec. 2, Ch. 508, L. 1987; amd. Sec. 3, Ch. 516, L. 1987.

Compiler's Comments
1987 Amendments: Chapters 209, 397, 437, 440, 508, and 516 at beginning inserted exception clause.

Cross-References
Limitation on landowner liability to recreationists, 23-2-321; Title 70, ch. 16, part 3.

Responsibility and liability of snowmobile area operators, 23-2-651 through 23-2-656.

Disputable presumptions, 26-1-602.

General duty of care, 28-1-201.

Liability for trade secret violations, 30-14-403, 30-14-404.

Liability of fellow employee for intentional and malicious acts or omissions, 39-71-413.

Liability for damage to property by oil and gas developer, 82-10-505.

Liability of irrigation districts, 85-7-2212.

27-1-702. Comparative negligence — extent to which contributory negligence bars recovery in action for damages. Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or injury to person or property if such negligence was not greater than the negligence of the person or the combined negligence of all persons against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributable to the person recovering.

History: En. 58-607.1 by Sec. 1, Ch. 60, L. 1975; R.C.M. 1947, 58-607.1; amd. Sec. 1, Ch. 505, L. 1987.

Compiler's Comments
1987 Amendment: Near end of section, after "person", inserted "or the combined negligence of all persons".

Cross-References
Pleading contributory negligence as an affirmative defense, Rule 8(c), M.R.Civ.P. (see Title 25, ch. 20).

Liability for death or injury to railroad employees, 69-14-1006.

27-1-703. Multiple defendants — determination of liability. (1) Except as provided in subsections (2) and (3), whenever the negligence of any party in any action is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

(2) Any party whose negligence is determined to be 50% or less of the combined negligence of all persons described in subsection (4) is severally liable only and is responsible only for the amount of negligence attributable to him, except as provided in subsection (3). The remaining parties are jointly and severally liable for the total less the amount attributable to the claimant.

(3) A party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant's damages or if one party acted as an agent of the other.

(4) On motion of any party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. For purposes of determining the percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of fact shall consider the negligence of the claimant, injured person, defendants, third-party defendants, persons released from liability by the claimant, persons

immune from liability to the claimant, and any other persons who have a defense against the claimant. The trier of fact shall apportion the percentage of negligence of all such persons. However, in attributing negligence among persons, the trier of fact may not consider or determine any amount of negligence on the part of any injured person's employer or coemployee to the extent that such employer or coemployee has tort immunity under the Workers' Compensation Act or the Occupational Disease Act of this state, of any other state, or of the federal government. Contribution shall be proportional to the liability of the parties against whom recovery is allowed. Nothing contained in this section shall make any party indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.

(5) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties shall contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party. A party found to be 50% or less negligent for the injury complained of is liable for contribution under this section only up to the percentage of negligence attributed to him.

History: En. 58-607.2 by Sec. 1, Ch. 433, L. 1977; R.C.M. 1947, 58-607.2; amd. Sec. 1, Ch. 523, L. 1981; amd. Sec. 2, Ch. 505, L. 1987.

Compiler's Comments

1987 Amendment: Substituted (1) through (5) for former (1) through (3) that read: "(1) Whenever the negligence of any party in any action is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

(2) On motion of any party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. Whenever more than one person is found to have contributed as a proximate cause to the injury complained of, the trier of fact shall apportion the degree of fault among such persons. Contribution shall be proportional to the negligence of the parties against whom recovery is allowed. Nothing contained in this section shall make any party indispensable pursuant to Rule 19, M.R.Civ.P.

(3) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties against whom recovery is allowed is liable to contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party."

Cross-References

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

Nonliability of employer insured under Workers' Compensation Act, 39-71-411.

27-1-704 through 27-1-709 reserved.

27-1-710. Civil liability for injuries involving alcohol consumption. (1) The purpose of this section is to set statutory criteria governing the liability of a person or entity that furnishes an alcoholic beverage for injury or damage arising from an event involving the person who consumed the beverage.

(2) A person or entity furnishing an alcoholic beverage may not be found liable for injury or damage arising from an event involving the consumer wholly or partially on the basis of a provision or a violation of a provision of Title 16.

(3) Furnishing a person with an alcoholic beverage is not a cause of, or grounds for finding the furnishing person or entity liable for, injury or damage wholly or partly arising from an event involving the person who consumed the beverage unless:

(a) the consumer was under the legal drinking age and the furnishing person knew that the consumer was underage or did not make a reasonable attempt to determine the consumer's age;

(b) the consumer was visibly intoxicated; or

(c) the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol.

History: En. Sec. 1, Ch. 1, Sp. L. March 1986.

Cross-References

"Alcoholic beverage" defined, 16-1-106.

Unlawfully selling or giving alcoholic beverage to minor or person under the influence, 16-3-301, 16-6-304, 16-6-305, 45-5-622, 45-5-623.

27-1-711. Liability of minor or person of unsound mind for own torts — exemplary damages. A minor or person of unsound mind is civilly liable for a wrong done by him but is not liable in exemplary damages unless at the time of the act he was capable of knowing that it was wrongful.

History: En. Sec. 24, Civ. C. 1895; re-en. Sec. 3598, Rev. C. 1907; re-en. Sec. 5686, R.C.M. 1921; Cal. Civ. C. Sec. 41; re-en. Sec. 5686, R.C.M. 1935; R.C.M. 1947, 64-113.

Cross-References

When exemplary damages allowed, 27-1-221.

27-1-712. Liability for damages for deceit. (1) One who willfully deceives another with intent to induce him to alter his position to his injury or risk is liable for any damage which he thereby suffers.

(2) A deceit, within the meaning of subsection (1), is either:

(a) the suggestion as a fact of that which is not true by one who does not believe it to be true;

(b) the assertion as a fact of that which is not true by one who has no reasonable ground for believing it to be true;

(c) the suppression of a fact by one who is bound to disclose it or who gives information of other facts which are likely to mislead for want of communication of that fact; or

(d) a promise made without any intention of performing it.

(3) One who practices a deceit with intent to defraud the public or a particular class of persons is deemed to have intended to defraud every individual in that class who is actually misled by the deceit.

History: (1)En. Sec. 2291, Civ. C. 1895; re-en. Sec. 5072, Rev. C. 1907; re-en. Sec. 7574, R.C.M. 1921; Cal. Civ. C. Sec. 1709; Field Civ. C. Sec. 848; re-en. Sec. 7574, R.C.M. 1935; Sec. 58-602, R.C.M. 1947; (2)En. Sec. 2292, Civ. C. 1895; re-en. Sec. 5073, Rev. C. 1907; re-en. Sec. 7575, R.C.M. 1921; Cal. Civ. C. Sec. 1710; Field Civ. C. Sec. 849; re-en. Sec. 7575, R.C.M. 1935; Sec. 58-603, R.C.M. 1947; (3)En. Sec. 2293, Civ. C. 1895; re-en. Sec. 5074, Rev. C. 1907; re-en. Sec. 7576, R.C.M. 1921; Cal. Civ. C. Sec. 1711; Field Civ. C. Sec. 850; re-en. Sec. 7576, R.C.M. 1935; Sec. 58-604, R.C.M. 1947; R.C.M. 1947, 58-602, 58-603, 58-604.

Cross-References

Actual and constructive fraud, 28-2-404 through 28-2-406.

Unfair trade practices and consumer protection, Title 30, ch. 14.

27-1-713. Duty to restore thing wrongfully acquired or retained. One who obtains a thing without the consent of its owner, by a consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse must restore it to the person from whom it was thus obtained unless he has acquired a title thereto superior to that of such other person or unless the transaction was corrupt and unlawful on both sides. The restoration required by this section must be made without demand except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until he has notice of the mistake.

History: **Ap. p. Sec. 2294, Civ. C. 1895; re-en. Sec. 5075, Rev. C. 1907; re-en. Sec. 7577, R.C.M. 1921; Cal. Civ. C. Sec. 1712; Field Civ. C. Sec. 851; re-en. Sec. 7577, R.C.M. 1935; Sec. 58-605, R.C.M. 1947; Ap. p. Sec. 2295, Civ. C. 1895; re-en. Sec. 5076, Rev. C. 1907; re-en. Sec. 7578, R.C.M. 1921; Cal. Civ. C. Sec. 1713; Field Civ. C. Sec. 852; re-en. Sec. 7578, R.C.M. 1935; Sec. 58-606, R.C.M. 1947; R.C.M. 1947, 58-605, 58-606.**

27-1-714. Limits on liability for emergency care rendered at scene of accident or emergency. (1) Any person licensed as a physician and surgeon under the laws of the state of Montana, any volunteer firefighter or officer of any nonprofit volunteer fire company, or any other person who in good faith renders emergency care or assistance without compensation except as provided in subsection (2) at the scene of an emergency or accident is not liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care or assistance.

(2) Subsection (1) includes a person properly trained under the laws of this state who operates an ambulance to and from the scene of an emergency or renders emergency medical treatment on a volunteer basis so long as the total reimbursement received for such volunteer services does not exceed 25% of his gross annual income or $3,000 a calendar year, whichever is greater.

(3) If a nonprofit subscription fire company refuses to fight a fire on nonsubscriber property, such refusal does not constitute gross negligence or a willful or wanton act or omission.

History: **En. Sec. 1, Ch. 93, L. 1963; R.C.M. 1947, 17-410; amd. Sec. 1, Ch. 390, L. 1979; amd. Sec. 1, Ch. 330, L. 1985; amd. Sec. 1, Ch. 133, L. 1987.**

Compiler's Comments

1987 Amendment: In (2) substituted "the total reimbursement" for "any reimbursement" and at end inserted "or $3,000 a calendar year, whichever is greater".

Cross-References

Fire protection, Title 7, ch. 33.

Volunteer Firefighters' Compensation Act, Title 19, ch. 12.

27-1-715. Liability of owner of vicious dog. (1) The owner of any dog which shall without provocation bite any person while such person is on or in a public place or lawfully on or in a private place, including the property of the owner of such dog, located within an incorporated city or town shall be liable for such damages as may be suffered by the person bitten regardless of the former viciousness of such dog or the owner's knowledge of such viciousness.

(2) A person is lawfully upon the private property of such owner within the meaning of this section when he is on such property in the performance of any duty imposed upon him by the laws of this state or by the laws or postal regulations of the United States of America or when he is on such

property as an invitee or licensee of the person lawfully in possession of the property.

History: **En. Sec. 1, Ch. 113, L. 1943; R.C.M. 1947, 17-409.**

Cross-References

Local government control of dogs, Title 7, ch. 23.

27-1-716. Immunity of persons donating food for free distribution. (1) As used in this section, the following definitions apply:

(a) "Donor" means any processor, distributor, wholesaler, or retailer of perishable or canned foods or farmer or individual who donates food for free distribution.

(b) "Gleaner" means a person who harvests for free distribution perishable food that has been donated by the owner.

(c) "Perishable food" means any food that may spoil or otherwise become unfit for human consumption because of its nature, type, or physical condition. Perishable food includes but is not limited to fresh or processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruit and vegetables, grains, and foods that have been refrigerated or frozen.

(d) "Canned food" means any food that has been commercially processed and prepared for human consumption.

(2) Notwithstanding any other provision of law:

(a) a good faith donor of any canned or perishable food, apparently fit for human consumption, to a bona fide charitable or nonprofit organization for free distribution or a gleaner of perishable food, apparently fit for human consumption, for free distribution is not subject to any criminal penalty or civil damages arising from the condition of the food, unless an injury is caused by gross negligence or intentional misconduct of the donor or gleaner;

(b) a bona fide charitable or nonprofit organization that in good faith receives food, apparently fit for human consumption, and distributes it at no charge is not subject to any criminal penalty or civil damages resulting from the condition of the food unless an injury is caused by gross negligence or intentional misconduct of the organization.

(3) Immunity under this section extends to the good faith donation of canned or perishable foods that, while apparently fit for human consumption, are not readily marketable due to appearance, grade, surplus, or other considerations, as well as to those foods that are readily marketable.

(4) If the ultimate distributor charges any fee for the food received from a donor or gleaner, such fact shall not deprive the donor or gleaner of the immunity provided under this section.

(5) This section does not restrict the authority of any lawful agency to inspect, regulate, or ban the use of donated food for human consumption.

History: **En. Sec. 1, Ch. 259, L. 1981.**

27-1-717. Issuing a bad check or stopping payment — civil liability. (1) A person who issues a check, draft, or an order for the payment of money is liable for damages in a civil action as provided in subsection (2) to the person to whom the check, draft, or order is issued if the check, draft, or order is:

(a) dishonored for lack of funds or credit or because the issuer has no account with the drawee; or

(b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer stops payment with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of the check.

(2) The amount of damages awarded pursuant to subsection (1) shall be an amount equal to the greater of $100 or three times the amount for which the check, draft, or order was issued. However, damages may not exceed the value of the check, draft, or order by more than $500.

(3) The remedy provided by this section is available only if:

(a) the person to whom the check, draft, or order was issued has made written demand, mailed to the last known address or the address shown on the check, to the drawer for payment of the amount of such check, draft, or order not less than 10 days before commencing the action; and

(b) the issuer has failed to tender an amount of money equal to the amount demanded prior to the commencement of the action.

(4) The remedy provided by this section:

(a) may be pursued notwithstanding the provisions of 27-1-312;

(b) may be pursued whether or not a criminal penalty is sought under 45-6-316 or any other statute providing a criminal penalty; and

(c) does not affect the engagement of the drawer provided for in 30-3-413 to pay the amount of the draft. However, in case of any inconsistency with the provisions of Title 30, chapter 3, the provisions of this section apply.

History: En. Secs. 1, 2, Ch. 611, L. 1983; amd. Sec. 1, Ch. 557, L. 1985.

27-1-718. Civil penalty for shoplifting. (1) An adult or emancipated minor, as defined in 20-25-501, who takes possession of any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile establishment without the consent of the owner or seller and with the intention of converting the goods to his own use without having paid the purchase price thereof is liable to the owner or seller for a penalty, whether or not the goods have been returned undamaged, in the amount of the retail value of the goods, not to exceed $500. This amount is in addition to actual damages.

(2) When an unemancipated minor takes possession of any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile establishment without the consent of the owner or seller and with the intention of converting the goods to his own use without having paid the purchase price thereof, the minor's parent or legal guardian having custody of the minor is liable to the owner or seller for a penalty, whether or not the goods have been returned undamaged, equal to the retail value of the goods, not to exceed $500. For the purposes of this subsection (2), liability may not be imposed upon any governmental or private agency that has been assigned responsibility for the minor child pursuant to court order or action of the department of family services.

(3) Judgments, but not claims, arising under this section may be assigned.

(4) A conviction for violation of 45-6-301 is not a condition precedent to maintenance of a civil action under this section.

History: En. Sec. 1, Ch. 506, L. 1985; amd. Sec. 11, Ch. 609, L. 1987.

Compiler's Comments

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

Cross-References

Criminal offense of theft, 45-6-301.

27-1-719. Strict liability of seller of product for physical harm to user or consumer. (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to his property if:

(a) the seller is engaged in the business of selling such a product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of his product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and such misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702.

History: En. Sec. 1, Ch. 466, L. 1987.

27-1-720. Products liability — defect in design of firearms or ammunition. (1) In a products liability action, no firearm or ammunition may be considered defective in design on the basis that the benefits of the product do not outweigh the risk of injury posed by its potential to cause serious injury, damage, or death when discharged.

(2) For purposes of this section:

(a) the potential of a firearm or ammunition to cause serious injury, damage, or death when discharged does not make the product defective in design; and

(b) injuries or damages resulting from the discharge of a firearm or ammunition are not proximately caused by its potential to cause serious injury, damage, or death but are proximately caused by the actual discharge of the product.

(3) The provisions of this section do not affect a products liability cause of action based upon the improper selection of design alternatives.

History: **En. Sec. 1, Ch. 359, L. 1987.**

27-1-721 through 27-1-730 reserved.

27-1-731. Individual immunity for and indemnification of ditch company employees. (1) As used in this section:

(a) "ditch company" means a private, not-for-profit irrigation ditch or water user cooperative, corporation, association, or organization;

(b) "employee" means a director, officer, or employee of a ditch company.

(2) An employee of a ditch company is not individually liable for actions and omissions within the course and scope of his employment or position, except as provided in subsection (6). The immunity granted by this subsection does not apply to the liability of a not-for-profit cooperative, corporation, association, or organization.

(3) Upon receiving service of a summons and complaint in an action against him, the employee shall give written notice to his supervisor requesting that a defense to the action be provided by the ditch company. If the employee has no supervisor, he shall give notice of the action to the attorney of the ditch company defending legal actions of that type. Except as provided in subsection (6), the ditch company shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the ditch company. The ditch company shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the ditch company refuses or is unable to provide a direct defense, the employee may retain other counsel. Except as provided in subsection (6), the ditch company shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may otherwise be payable under this section.

(4) The employee must be indemnified by the ditch company for any money judgments or legal expenses, including attorney fees either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as a result of the suit unless the employee's conduct falls within the exclusions provided in subsection (6).

(5) Recovery against a ditch company is a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, or omission or other actionable conduct gave rise to the claim. In an action against a ditch company, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the ditch company acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment unless the claim constitutes an exclusion provided in subsections (6)(b) through (6)(d).

(6) The employee may not be defended or indemnified by the ditch company for any money judgments or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:

(a) the conduct upon which the claim is based constitutes oppression, fraud, or malice or for any other reason does not arise out of the course and scope of the employee's employment or position;

(b) the conduct of the employee is a criminal offense as defined in Title 45, chapters 4 through 7;

(c) the employee compromised or settled the claim without the consent of the ditch company; or

(d) the employee failed or refused to cooperate reasonably in the defense of the case.

(7) If no judicial determination has been made applying the exclusions provided in subsection (6), the ditch company may determine whether those exclusions apply. However, if there is a dispute as to whether the exclusions of subsection (6) apply and the ditch company concludes it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action, the ditch company is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in such action holding that the ditch company had no obligation to defend the employee. The ditch company has no obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the ditch company under this subsection.

History: **En. Sec. 1, Ch. 397, L. 1987.**

27-1-732. Immunity of nonprofit corporation officers, directors, and volunteers. (1) No officer, director, or volunteer of a nonprofit corporation is individually liable for any action or omission made in the course and scope of his official capacity on behalf of the nonprofit corporation. This section does not apply to liability for willful or wanton misconduct. The immunity granted by this section does not apply to the liability of a nonprofit corporation.

(2) For purposes of this section, "nonprofit corporation" means:

(a) an organization exempt from taxation under section 501(c) of the Internal Revenue Code of 1954; or

(b) a corporation or organization which is eligible for or has been granted by the department of revenue tax exempt status under the provisions of 15-31-102.

History: **En. Sec. 1, Ch. 437, L. 1987.**

27-1-733. Liability of nonprofit organizations and their employees for injuries suffered in sponsored rodeo and similar events. (1) No nonprofit organization sponsoring a rodeo, cowboy polo, cutting horse, O-Mok-See, trail riding, horse packing, horse show, or jackpot roping event, or employee of the organization, is liable for injuries suffered by a contestant as a result of his voluntary participation in the event except for injuries caused by a willful or wanton act of the sponsoring organization or its employees.

(2) For purposes of this section, a minor is considered to be in voluntary participation in an event if:

(a) he has provided written consent to participate in the event; and

(b) the consent is approved by one of the minor's parents or by his legal guardian.

History: En. Sec. 1, Ch. 508, L. 1987.

Part 8

Libel and Slander

Part Cross-References

Freedom of speech, expression, and press, Art. II, sec. 7, Mont. Const.

27-1-801. Defamation — how effected. Defamation is effected by:

(1) libel;

(2) slander.

History: En. Sec. 31, Civ. C. 1895; re-en. Sec. 3601, Rev. C. 1907; re-en. Sec. 5689, R.C.M. 1921; Cal. Civ. C. Sec. 44; Field Civ. C. Sec. 28; re-en. Sec. 5689, R.C.M. 1935; R.C.M. 1947, 64-202.

27-1-802. Libel defined. Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye which exposes any person to hatred, contempt, ridicule, or obloquy or which causes him to be shunned or avoided or which has a tendency to injure him in his occupation.

History: En. Sec. 32, Civ. C. 1895; re-en. Sec. 3602, Rev. C. 1907; re-en. Sec. 5690, R.C.M. 1921; Cal. Civ. C. Sec. 45; Field Civ. C. 29; re-en. Sec. 5690, R.C.M. 1935; R.C.M. 1947, 64-203.

27-1-803. Slander defined. Slander is a false and unprivileged publication other than libel which:

(1) charges any person with crime or with having been indicted, convicted, or punished for crime;

(2) imputes in him the present existence of an infectious, contagious, or loathsome disease;

(3) tends directly to injure him in respect to his office, profession, trade, or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profit;

(4) imputes to him impotence or want of chastity; or

(5) by natural consequence causes actual damage.

History: En. Sec. 33, Civ. C. 1895; re-en. Sec. 3603, Rev. C. 1907; re-en. Sec. 5691, R.C.M. 1921; Cal. Civ. C. Sec. 46; Field Civ. C. Sec. 30; re-en. Sec. 5691, R.C.M. 1935; R.C.M. 1947, 64-204.

27-1-804. What communications are privileged. A privileged publication is one made:

(1) in the proper discharge of an official duty;

(2) in any legislative or judicial proceeding or in any other official proceeding authorized by law;

(3) in a communication without malice to a person interested therein by one who is also interested or by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the

communication innocent or who is requested by the person interested to give the information;

(4) by a fair and true report without malice of a judicial, legislative, or other public official proceeding or of anything said in the course thereof.

History: En. Sec. 34, Civ. C. 1895; re-en. Sec. 3604, Rev. C. 1907; re-en. Sec. 5692, R.C.M. 1921; Cal. Civ. C. Sec. 47; Based on Field Civ. C. Sec. 31; re-en. Sec. 5692, R.C.M. 1935; R.C.M. 1947, 64-208.

27-1-805 through 27-1-810 reserved.

27-1-811. When owner of radio station not liable for material broadcast. No person, firm, or corporation owning or operating a radio broadcasting station is liable under the law of defamation on account of having made its broadcasting facilities available to any person, including but not limited to a candidate for public office, for discussion of controversial or other subjects in the absence of proof of actual malice on the part of such owner or operator.

History: En. Sec. 1, Ch. 122, L. 1939; R.C.M. 1947, 64-205; amd. Sec. 10, Ch. 12, L. 1979.

27-1-812. Right of owner to require prior submission of text to be broadcast. Any person, firm, or corporation owning or operating a radio broadcasting station shall have the right but shall not be compelled to require the submission and permanent filing in such station of a copy of the complete address or other form of expression, if in words, intended to be broadcast over such station, not more than 48 hours before the time of the intended broadcast thereof.

History: En. Sec. 2, Ch. 122, L. 1939; R.C.M. 1947, 64-206.

27-1-813. Liability of person broadcasting — liability of owner for broadcast prepared by station. Nothing in 27-1-811 or 27-1-812 may be construed to relieve any person broadcasting over a radio station from liability under the law of defamation or to relieve any person, firm, or corporation owning or operating a radio broadcasting station from liability under the law of defamation on account of any broadcast prepared or made by such person, firm, or corporation or by any officer or employee thereof in the course of his employment. Whenever such an owner or operator is liable on account of a broadcast and two or more broadcasting stations were connected simultaneously or by transcription, film, metal tape, or other approved or adapted use for joint operation in the making of the broadcast, liability is limited solely to the person, firm, or corporation owning or operating the radio station which originated the broadcast.

History: En. Sec. 3, Ch. 122, L. 1939; R.C.M. 1947, 64-207; amd. Sec. 11, Ch. 12, L. 1979.

27-1-814 through 27-1-817. Repealed. Sec. 62, Ch. 12, L. 1979.

Compiler's Comments
Histories of Repealed Sections:

27-1-814 through 27-1-817. En. Sec. 1, Ch. 159, L. 1961; amd. Sec. 1, Ch. 58, L. 1971; R.C.M. 1947, 64-207.1.

27-1-818. Media management to be given opportunity to publish correction prior to action for libel or slander. In order to claim punitive damages because of any defamatory publication in or broadcast on any newspaper, magazine, periodical, radio or television station, or cable television system, the defamed person shall first give those alleged to be responsible or liable for the publication or broadcast a reasonable opportunity to correct the defamatory matter. Such opportunity shall be given by notice in writing specifying the article or broadcast and the statements therein which are claimed to be false and defamatory and a statement of what are claimed to be the true facts. The notice may also state the sources, if any, from which the true facts may be ascertained with definiteness and certainty.

History: En. Sec. 1, Ch. 569, L. 1979.

27-1-819. What constitutes a reasonable time for correction. The first issue of a newspaper, magazine, or periodical published after the expiration of 1 week from the receipt of the notice provided for in 27-1-818 is within a reasonable time for correction. In the case of radio and television stations and cable television systems, a broadcast made at the same time of day as the broadcast complained of and of at least equal duration which is made within 7 days following receipt of such notice is within a reasonable time for correction.

History: En. Sec. 2, Ch. 569, L. 1979.

27-1-820. Content of correction. To the extent that the true facts are, with reasonable diligence, ascertainable with definiteness and certainty, only a retraction constitutes a correction; otherwise the publication or broadcast of the defamed person's statement of the true facts or so much thereof as is not defamatory of another, scurrilous, or otherwise improper for publication or broadcast, published or broadcast as his statement, constitutes a correction within the meaning of 27-1-818 through 27-1-821.

History: En. Sec. 3, Ch. 569, L. 1979.

27-1-821. Extent to which a correction is a defense upon trial. If it appears upon trial that the publication or broadcast complained of was made under honest mistake, then a correction timely published or broadcast without comment in a position and type as prominent as the alleged libel or in a broadcast made at the same time of day as the broadcast complained of and of at least equal duration constitutes a defense against the recovery of punitive damages.

History: En. Sec. 4, Ch. 569, L. 1979.

Parts 9 and 10 reserved

Part 11

Liability of Mental Health Professionals

27-1-1101. Definition. As used in this part, "mental health professional" means:

(1) a certified professional person as defined in 53-21-106;
(2) a physician licensed under Title 37, chapter 3;

(3) a professional counselor licensed under Title 37, chapter 23;
(4) a psychologist licensed under Title 37, chapter 17; or
(5) a social worker licensed under Title 37, chapter 22.

History: En. Sec. 1, Ch. 214, L. 1987.

27-1-1102. Duty to warn of violent behavior. A mental health professional has a duty to warn of or take reasonable precautions to provide protection from violent behavior only if the patient has communicated to the mental health professional an actual threat of physical violence by specific means against a clearly identified or reasonably identifiable victim. The duty is discharged by a mental health professional if he has:

(1) made reasonable efforts to communicate the threat to the victim and notify the law enforcement agency closest to the patient's or the victim's residence of the threat of violence; and

(2) supplied a requesting law enforcement agency with any information he has concerning the threat of violence.

History: En. Sec. 2, Ch. 214, L. 1987.

27-1-1103. Immunity from liability. (1) No monetary liability and no cause of action may arise against any mental health professional for failing to predict, warn of, or take precautions to provide protection from a patient's threatened violent behavior unless he has a duty to warn of violent behavior, as provided in 27-1-1102.

(2) No monetary liability and no cause of action may arise against any mental health professional for disclosing confidential or privileged information in an effort to discharge a duty arising under 27-1-1102.

History: En. Sec. 3, Ch. 214, L. 1987.

CHAPTER 2

STATUTES OF LIMITATIONS

Part 1 — General Provisions

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27-2-201. Actions upon judgments.
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27-2-407. When action terminated or judgment reversed.
27-2-408. Assertion of counterclaim.
27-2-409. Acknowledgment of debt or part payment.

Part 1

General Provisions

27-2-101. Definition of action. The word "action", as used in this chapter, is to be construed, whenever it is necessary to do so, as including a special proceeding of a civil nature.

History: En. Sec. 559, C. Civ. Proc. 1895; re-en. Sec. 6476, Rev. C. 1907; re-en. Sec. 9066, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 363; re-en. Sec. 9066, R.C.M. 1935; R.C.M. 1947, 93-2720; amd. Sec. 12, Ch. 12, L. 1979.

27-2-102. When action commenced. (1) For the purposes of statutes relating to the time within which an action must be commenced:

(a) a claim or cause of action accrues when all elements of the claim or cause exist or have occurred, the right to maintain an action on the claim or cause is complete, and a court or other agency is authorized to accept jurisdiction of the action;

(b) an action is commenced when the complaint is filed.

(2) Unless otherwise provided by statute, the period of limitation begins when the claim or cause of action accrues. Lack of knowledge of the claim or cause of action, or of its accrual, by the party to whom it has accrued does not postpone the beginning of the period of limitation.

(3) The period of limitation does not begin on any claim or cause of action for an injury to person or property until the facts constituting the claim have been discovered or, in the exercise of due diligence, should have been discovered by the injured party if:

(a) the facts constituting the claim are by their nature concealed or self-concealing; or

(b) before, during, or after the act causing the injury, the defendant has taken action which prevents the injured party from discovering the injury or its cause.

(4) Subsection (3) does not apply to actions involving the limitations contained in 27-2-205.

History: En. Sec. 540, C. Civ. Proc. 1895; re-en. Sec. 6457, Rev. C. 1907; re-en. Sec. 9047, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 350; re-en. Sec. 9047, R.C.M. 1935; R.C.M. 1947, 93-2701; amd. Sec. 13, Ch. 12, L. 1979; amd. Sec. 1, Ch. 441, L. 1987.

Compiler's Comments

1987 Amendment: Inserted (1)(a) and (2) through (4).

Cross-References

Commencement of action, Rule 3, M.R.Civ.P. (see Title 25, ch. 20).

27-2-103. Actions by state subject to limitations. The limitations prescribed in part 2 of this chapter apply to actions brought in the name of the state or for the benefit of the state in the same manner as to actions by private parties.

History: En. Sec. 49, p. 50, L. 1877; re-en. Sec. 49, 1st Div. Rev. Stat. 1879; re-en. Sec. 49, 1st Div. Comp. Stat. 1887; re-en. Sec. 520, C. Civ. Proc. 1895; re-en. Sec. 6453, Rev. C. 1907; re-en. Sec. 9043, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 345; re-en. Sec. 9043, R.C.M. 1935; R.C.M. 1947, 93-2615; amd. Sec. 14, Ch. 12, L. 1979.

27-2-104. Application of this state's statutes of limitations — actions against nonresidents. Where a cause of action which does not involve the title to or possession of real property within the state accrues against a person who is not then a resident of the state, an action cannot be brought thereon in a court of the state against him or his personal representative after the expiration of the time limited by the laws of his residence for bringing a like action except by a resident of the state and in one of the following cases:

(1) where the cause of action originally accrued in favor of a resident of the state;

(2) where, before the expiration of the time so limited, the person in whose favor it originally accrued was or became a resident of the state or the cause of action was assigned to and thereafter continuously owned by a resident of the state.

History: En. Sec. 556, C. Civ. Proc. 1895; re-en. Sec. 6473, Rev. C. 1907; re-en. Sec. 9063, R.C.M. 1921; re-en. Sec. 9063, R.C.M. 1935; R.C.M. 1947, 93-2717.

27-2-105. Periods of limitation. All civil actions must be commenced within the periods prescribed in part 2 except when another statute specifically provides a different limitation.

History: En. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; R.C.M. 1947, 93-2601; amd. Sec. 15, Ch. 12, L. 1979.

Cross-References

Limitation on action against museum, 22-3-521.

Limitation on commencing action, 25-1-102.

Part 2

Time Limits on Specific Kinds of Actions

27-2-201. Actions upon judgments. (1) The period prescribed for the commencement of an action upon a judgment or decree of any court of record of the United States or of any state within the United States is within 10 years.

(2) The period prescribed for the commencement of an action upon a judgment or decree rendered in a court not of record is within 5 years. The cause of action is deemed, in such case, to have accrued when final judgment was rendered.

History: **Ap. p. Sec. 1, p. 172, L. 1889; amd. Sec. 511, C. Civ. Proc. 1895; re-en. Sec. 6444, Rev. C. 1907; re-en. Sec. 9028; R.C.M. 1921; Cal. C. Civ. Proc. Sec. 336; re-en. Sec. 9028, R.C.M. 1935; Sec. 93-2602, R.C.M. 1947; Ap. p. Sec. 513, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 157, L. 1901; amd. Sec. 1, Ch. 128, L. 1903; re-en. Sec. 6446, Rev. C. 1907; re-en. Sec. 9030, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 339; re-en. Sec. 9030, R.C.M. 1935; amd. Sec. 13, Ch. 263, L. 1975; Sec. 93-2604, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2602(1), 93-2604(2).**

Cross-References

Time limit for issuing execution, 25-13-101.

Execution after 6 years, 25-13-102.

27-2-202. Actions based on contract or other obligation. (1) The period prescribed for the commencement of an action upon any contract, obligation, or liability founded upon an instrument in writing is within 8 years.

(2) The period prescribed for the commencement of an action upon a contract, account, or promise not founded on an instrument in writing is within 5 years.

(3) The period prescribed for the commencement of an action upon an obligation or liability, other than a contract, account, or promise, not founded upon an instrument in writing is within 3 years.

History: **Ap. p. Sec. 1, p. 172, L. 1889; re-en. Sec. 512, C. Civ. Proc. 1895; re-en. Sec. 6445, Rev. C. 1907; re-en. Sec. 9029, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 337; re-en. Sec. 9029, R.C.M. 1935; Sec. 93-2603, R.C.M. 1947; Ap. p. Sec. 513, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 157, L. 1901; amd. Sec. 1, Ch. 128, L. 1903; re-en. Sec. 6446, Rev. C. 1907; re-en. Sec. 9030, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 339; re-en. Sec. 9030, R.C.M. 1935; amd. Sec. 13, Ch. 263, L. 1975; Sec. 93-2604, R.C.M. 1947; Ap. p. Sec. 514, C. Civ. Proc. 1895; amd. Sec. 2, p. 157, L. 1901; amd. Sec. 2, Ch. 128, L. 1903; re-en. Sec. 6447, Rev. C. 1907; re-en. Sec. 9031, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 339; re-en. Sec. 9031, R.C.M. 1935; Sec. 93-2605, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2603, 93-2604(1), 93-2605(3); amd. Sec. 16, Ch. 12, L. 1979.**

Cross-References

Contracts not written in plain language, limitation on remedies, 30-14-1112.

Regulated public utilities — backbilling for errors limited to 6 months, 69-3-221.

27-2-203. Actions for relief on ground of fraud or mistake. The period prescribed for the commencement of an action for relief on the ground of fraud or mistake is within 2 years, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

History: **Ap. p. Sec. 1, p. 50, L. 1893; re-en. Sec. 524, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 128, L. 1903; re-en. Sec. 6449, Rev. C. 1907; amd. Sec. 1, Ch. 47, L. 1917; amd. Sec. 1, Ch. 172, L. 1921; re-en. Sec. 9033, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 338; re-en. Sec. 9033, R.C.M. 1935; amd. Sec. 1, Ch. 423, L. 1975; Sec. 93-2607, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2607(4).**

27-2-204. Tort actions — general and personal injury. (1) The period prescribed for the commencement of an action upon a liability not founded upon an instrument in writing is within 3 years.

(2) The period prescribed for the commencement of an action to recover damages for the death of one caused by the wrongful act or neglect of another is within 3 years.

(3) The period prescribed for the commencement of an action for libel, slander, assault, battery, false imprisonment, or seduction is within 2 years.

History: (1)En. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; (2)En. Sec. 514, C. Civ. Proc. 1895; amd. Sec. 2, p. 157, L. 1901; amd. Sec. 2, Ch. 128, L. 1903; re-en. Sec. 6447, Rev. C. 1907; re-en. Sec. 9031, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 339; re-en. Sec. 9031, R.C.M. 1935; Sec. 93-2605, R.C.M. 1947; (3)En. Sec. 515, C. Civ. Proc. 1895; re-en. Sec. 6448, Rev. C. 1907; re-en. Sec. 9032, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 340; re-en. Sec. 9032, R.C.M. 1935; Sec. 93-2606, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2605(2), (3), 93-2606(3); amd. Sec. 17, Ch. 12, L. 1979.

27-2-205. Actions for medical malpractice. (1) Action in tort or contract for injury or death against a physician or surgeon, dentist, registered nurse, nursing home or hospital administrator, dispensing optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, a licensed hospital or long-term care facility, or licensed medical professional corporation, based upon alleged professional negligence or for rendering professional services without consent or for an act, error, or omission, shall, except as provided in subsection (2), be commenced within 3 years after the date of injury or 3 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs last, but in no case may such action be commenced after 5 years from the date of injury. However, this time limitation shall be tolled for any period during which there has been a failure to disclose any act, error, or omission upon which such action is based and which is known to him or through the use of reasonable diligence subsequent to said act, error, or omission would have been known to him.

(2) Notwithstanding the provisions of 27-2-401, in an action for death or injury of a minor who was under the age of 4 on the date of his injury, the period of limitations in subsection (1) begins to run when the minor reaches his eighth birthday or dies, whichever occurs first, and the time for commencement of the action is tolled during any period during which the minor does not reside with a parent or guardian.

History: En. Sec. 1, Ch. 328, L. 1971; amd. Sec. 1, Ch. 191, L. 1973; R.C.M. 1947, 93-2624; amd. Sec. 1, Ch. 499, L. 1987.

Compiler's Comments

1987 Amendment: In (1), in first sentence near beginning, inserted "in tort or contract", included hospital administrator and licensed medical professional corporation in list of affected health care providers, near middle, after "licensed medical professional corporation", deleted "as the employer of any such person", before "error" inserted "an act", after "omission" deleted "in such person's practice", inserted "except as provided in subsection (2)", and in second sentence, near beginning, substituted "during which there has been a failure" for "during which such person has failed"; inserted (2); and made minor changes in phraseology.

Cross-References

Montana Medical Legal Panel Act, Title 27, ch. 6.

27-2-206. Actions for legal malpractice. An action against an attorney licensed to practice law in Montana or a paralegal assistant or a legal intern employed by an attorney based upon the person's alleged professional negligent act or for error or omission in the person's practice must be commenced within 3 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the act, error, or omission, whichever occurs last, but in no case may the action be commenced after 10 years from the date of the act, error, or omission.

History: En. 93-2625 by Sec. 1, Ch. 220, L. 1977; R.C.M. 1947, 93-2625.

27-2-207. Injuries involving property. Within 2 years is the period prescribed for the commencement of an action for:

(1) injury to or waste or trespass on real or personal property;

(2) taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property;

(3) killing or injuring stock by a railroad corporation or company.

History: Ap. p. Sec. 1, p. 50, L. 1893; re-en. Sec. 524, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 128, L. 1903; re-en. Sec. 6449, Rev. C. 1907; amd. Sec. 1, Ch. 47, L. 1917; amd. Sec. 1, Ch. 172, L. 1921; re-en. Sec. 9033, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 338; re-en. Sec. 9033, R.C.M. 1935; amd. Sec. 1, Ch. 423, L. 1975; Sec. 93-2607, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2607(part).

Cross-References

Limitation on action against museum for damage to loaned property or to recover property, 22-3-521.

27-2-208. Actions for damages arising out of work on improvements to real property. (1) Except as provided in subsections (2) and (3), no action to recover damages (other than an action upon any contract, obligation, or liability founded upon an instrument in writing) resulting from or arising out of the design, planning, supervision, inspection, construction, or observation of construction of or land surveying done in connection with any improvement to real property shall be commenced more than 10 years after completion of such improvement.

(2) Notwithstanding the provisions of subsection (1), an action for such damages for an injury which occurred during the 10th year after such completion may be commenced within 1 year after the occurrence of such injury.

(3) The limitation prescribed by this section shall not affect the responsibility of any owner, tenant, or person in actual possession and control of the improvement at the time a right of action arises.

(4) As used in this section, the term "completion" means that degree of completion at which the owner can utilize the improvement for the purpose for which it was intended or when a completion certificate is executed, whichever is earlier.

(5) Nothing in this section shall be construed as extending the period prescribed by the laws of this state for the bringing of any action.

History: En. Secs. 1, 2, 3, 4, 5, Ch. 60, L. 1971; R.C.M. 1947, 93-2619, 93-2620, 93-2621, 93-2622, 93-2623.

27-2-209. Actions against local government or local government official. (1) The period prescribed for the commencement of an action against a sheriff, coroner, or constable upon a liability incurred by the doing of an act in his official capacity and in virtue of his office or by the omission of an official duty, including the nonpayment of money collected upon an execution, is within 3 years; but this subsection does not apply for an action for an escape.

(2) The period prescribed for the commencement of an action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process is within 1 year.

(3) Actions for claims against a county which have been rejected by the county commissioners must be commenced within 6 months after the first rejection thereof by such board.

(4) The period prescribed for the commencement of an action against a municipal corporation for damages or injuries to property caused by a mob or riot is within 1 year.

History: Ap. p. Sec. 514, C. Civ. Proc. 1895; amd. Sec. 2, p. 157, L. 1901; amd. Sec. 2, Ch. 128, L. 1903; re-en. Sec. 6447, Rev. C. 1907; re-en. Sec. 9031, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 339; re-en. Sec. 9031, R.C.M. 1935; Sec. 93-2605, R.C.M. 1947; Ap. p. Sec. 516, C. Civ. Proc. 1895; amd. Sec. 1, p. 144, L. 1899; re-en. Sec. 6450, Rev. C. 1907; amd. Sec. 2, Ch. 47, L. 1917; re-en. Sec. 9034, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 340; re-en. Sec. 9034, R.C.M. 1935; Sec. 93-2608, R.C.M. 1947; Ap. p. Sec. 517, C. Civ. Proc. 1895; amd. Sec. 1, p. 144, L. 1899; re-en. Sec. 6450a, Rev. C. 1907; re-en. Sec. 9035, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 341, 342; amd. Sec. 1, Ch. 27, L. 1933; re-en. Sec. 9035, R.C.M. 1935; Sec. 93-2609, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2605(1), 93-2608(part), 93-2609(2).

Cross-References

Limitation of actions against state or political subdivision, 2-9-302.

27-2-210. Actions arising from the seizure or sale of property for taxes. (1) Within 1 year is the period prescribed for the commencement of an action against an officer or officer de facto:

(a) to recover any goods, wares, merchandise, or other property seized by any such officer in his official capacity as tax collector;

(b) to recover the price or value of any goods, wares, merchandise, or other personal property so seized;

(c) for damages for the seizure, detention, or sale of or injury to any goods, wares, merchandise, or other personal property seized; or

(d) for damages done to any person or property in making any such seizure.

(2) The period prescribed for the commencement of an action to recover stock sold for a delinquent assessment is within 6 months.

(3) (a) An action against a county to recover a royalty interest in land acquired by the county by tax deed must be brought within 3 years after the commencement of commercial production of oil, gas, or other minerals from the land.

(b) Nothing contained in subsection (3)(a) shall change the nature of a royalty interest prior to actual production. The purpose of subsection (3)(a) is to place a limitation on actions seeking royalty interests reserved by the county, once production has commenced, without in any way affecting the validity of any claims a county may have prior to the commencement of production.

History: Ap. p. Sec. 516, C. Civ. Proc. 1895; amd. Sec. 1, p. 144, L. 1899; re-en. Sec. 6450, Rev. C. 1907; amd. Sec. 2, Ch. 47, L. 1917; re-en. Sec. 9034, R.C.M. 1921; Cal. C. Civ. Proc.

Sec. 340; re-en. Sec. 9034, R.C.M. 1935; Sec. 93-2608, R.C.M. 1947; Ap. p. Sec. 517, C. Civ. Proc. 1895; amd. Sec. 1, p. 144, L. 1899; re-en. Sec. 6450a, Rev. C. 1907; re-en. Sec. 9035, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 341, 342; amd. Sec. 1, Ch. 27, L. 1933; re-en. Sec. 9035, R.C.M. 1935; Sec. 93-2609, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2608(3), 93-2609(1); amd. Sec. 3, Ch. 458, L. 1985; (3)(b)En. Sec. 1, Ch. 458, L. 1985.

Cross-References

Tax sales, Title 15, ch. 17.

Ownership interests in land sold for taxes, Title 15, ch. 18.

27-2-211. Actions to enforce penalty or forfeiture or other statutory liability. (1) Within 2 years is the period prescribed for the commencement of an action upon:

(a) a statute for a penalty or forfeiture when the action is given to an individual or to an individual and the state, except when the statute imposing it prescribes a different limitation;

(b) a statute or an undertaking in a criminal action for a forfeiture or penalty to the state;

(c) a liability created by statute other than:

(i) a penalty or forfeiture; or

(ii) a statutory debt created by the payment of public assistance.

(2) The period prescribed for the commencement of an action by a municipal corporation for the violation of any city or town ordinance is within 1 year.

(3) Notwithstanding any other provision of this chapter, actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed or to enforce a liability created by law must be brought within 3 years after the discovery by the aggrieved party of the facts upon which the penalty of forfeiture attached or the liability was created.

(4) Unless fraud is involved, an action to enforce a statutory debt created by the payment of public assistance must be brought within 5 years from the date the debt arises. If fraud is involved, an action must be brought within 5 years of the discovery of the fraud.

History: Ap. p. Sec. 515, C. Civ. Proc. 1895; re-en. Sec. 6448, Rev. C. 1907; re-en. Sec. 9032, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 340; re-en. Sec. 9032, R.C.M. 1935; Sec. 93-2606, R.C.M. 1947; Ap. p. Sec. 1, p. 50, L. 1893; re-en. Sec. 524, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 128, L. 1903; re-en. Sec. 6449, Rev. C. 1907; amd. Sec. 1, Ch. 47, L. 1917; amd. Sec. 1, Ch. 172, L. 1921; re-en. Sec. 9033, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 338; re-en. Sec. 9033, R.C.M. 1935; amd. Sec. 1, Ch. 423, L. 1975; Sec. 93-2607, R.C.M. 1947; Ap. p. Sec. 516, C. Civ. Proc. 1895; amd. Sec. 1, p. 144, L. 1899; re-en. Sec. 6450, Rev. C. 1907; amd. Sec. 2, Ch. 47, L. 1917; re-en. Sec. 9034, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 340; re-en. Sec. 9034, R.C.M. 1935; Sec. 93-2608, R.C.M. 1947; Ap. p. Sec. 554, C. Civ. Proc. 1895; re-en. Sec. 6471, Rev. C. 1907; re-en. Sec. 9061, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 359; re-en. Sec. 9061, R.C.M. 1935; Sec. 93-2715, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2606(1), (2), 93-2607(1), 93-2608(part), 93-2715; amd. Sec. 18, Ch. 12, L. 1979; amd. Sec. 1, Ch. 190, L. 1981.

27-2-212. Actions arising from wrongful removal or exclusion from office. Within 6 months is the period prescribed for the commencement of:

(1) any action for the restoration to office by any person wrongfully or illegally removed or excluded from office;

(2) any suit for the recovery of salary or other emoluments of office by any person having been wrongfully or illegally removed or excluded from office.

History: Ap. p. Sec. 517, C. Civ. Proc. 1895; amd. Sec. 1, p. 144, L. 1899; re-en. Sec. 6450a, Rev. C. 1907; re-en. Sec. 9035, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 341, 342; amd. Sec. 1, Ch. 27, L. 1933; re-en. Sec. 9035, R.C.M. 1935; Sec. 93-2609, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2609(3), (4).

27-2-213. Actions against banks. (1) Except as provided in subsection (2), there are no time limitations on the commencement of actions to recover money or other property deposited with any bank, banker, trust company, or savings and loan corporation, association, or society.

(2) Any action to obtain, set aside, or question in any manner any stated or settled account between any bank, banker, trust company, or savings and loan corporation, association, or society and any depositor with such bank, banker, trust company, or savings and loan corporation, association, or society must be commenced within 5 years from the date of the statement of such account. Any action based upon or arising from the payment by any bank, banker, trust company, or savings and loan corporation, association, or society of a forged, raised, or otherwise altered check, order, or promissory note out of the deposit, money, or property of the plaintiff must be commenced within 3 years from the day on which the plaintiff or his agent, assignee, or personal representative was notified of such payment or received such check, order, or note marked "paid".

History: En. Sec. 523, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 78, L. 1905; re-en. Sec. 6456, Rev. C. 1907; re-en. Sec. 9046, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 348; re-en. Sec. 9046, R.C.M. 1935; R.C.M. 1947, 93-2618; amd. Sec. 19, Ch. 12, L. 1979.

27-2-214. Actions for mesne profits of real property. The period prescribed for the commencement of an action for mesne profits of real property is within 10 years.

History: Ap. p. Sec. 1, p. 172, L. 1889; amd. Sec. 511, C. Civ. Proc. 1895; re-en. Sec. 6444, Rev. C. 1907; re-en. Sec. 9028; R.C.M. 1921; Cal. C. Civ. Proc. Sec. 336; re-en. Sec. 9028, R.C.M. 1935; Sec. 93-2602, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2602(2).

27-2-215. Other actions. An action for relief not otherwise provided for must be commenced within 5 years after the cause of action accrues.

History: En. Sec. 518, C. Civ. Proc. 1895; re-en. Sec. 6451, Rev. C. 1907; re-en. Sec. 9041, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 343; re-en. Sec. 9041, R.C.M. 1935; R.C.M. 1947, 93-2613; amd. Sec. 20, Ch. 12, L. 1979.

Part 3

Accrual of Cause of Action

27-2-301. When demand necessary to perfect right to action. Where a right exists but a demand is necessary to entitle a person to maintain an action, the time within which the action must be commenced must be computed from the time when the demand is made, except where the right grows out of the receipt or detention of money or property by an agent, trustee, attorney, or other person acting in a fiduciary capacity, the time must be computed from the time when the person having the right to make the demand has actual knowledge of the facts upon which that right depends.

History: En. Sec. 551, C. Civ. Proc. 1895; re-en. Sec. 6468, Rev. C. 1907; re-en. Sec. 9058, R.C.M. 1921; re-en. Sec. 9058, R.C.M. 1935; R.C.M. 1947, 93-2712; amd. Sec. 2, Ch. 441, L. 1987.

Compiler's Comments

1987 Amendment: Near middle of first sentence, after "time when the", substituted "demand is made except" for "right to make the demand is complete except in one of the following cases"; deleted former (2) that read: "(2) Where there was a deposit of money not to be paid at a fixed time but only upon a special demand or a delivery of personal property not to be returned, specifically or in kind, at a fixed time or upon a fixed contingency, the time must be computed from the demand"; and made minor changes in phraseology.

27-2-302. Actions based on mutual accounts. In an action brought to recover a balance due upon a mutual, open, and current account where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side.

History: En. Sec. 48, p. 50, L. 1877; re-en. Sec. 48, 1st Div. Rev. Stat. 1879; re-en. Sec. 48, 1st Div. Comp. Stat. 1887; re-en. Sec. 519, C. Civ. Proc. 1895; re-en. Sec. 6452, Rev. C. 1907; re-en. Sec. 9042, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 344; re-en. Sec. 9042, R.C.M. 1935; R.C.M. 1947, 93-2614.

27-2-303. Actions for waste, trespass, or injury committed during mining work or exploration. When waste, trespass, or injury is committed by reason of underground work upon any mining claim or seismic exploration, location, spacing, drilling, equipping, producing, or other operation related to exploration or production of oil, gas, water, geothermal resources, or other minerals, the cause of action is not considered to have accrued until the discovery by the aggrieved party of the facts constituting such waste, trespass, or injury.

History: En. Sec. 1, p. 50, L. 1893; re-en. Sec. 524, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 128, L. 1903; re-en. Sec. 6449, Rev. C. 1907; amd. Sec. 1, Ch. 47, L. 1917; amd. Sec. 1, Ch. 172, L. 1921; re-en. Sec. 9033, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 338; re-en. Sec. 9033, R.C.M. 1935; amd. Sec. 1, Ch. 423, L. 1975; R.C.M. 1947, 93-2607(part); amd. Sec. 21, Ch. 12, L. 1979.

27-2-304. Actions involving personal property accruing after death and before issuance of letters of administration. The time within which an action must be commenced by an executor or administrator to recover personal property taken after the death of a testator or intestate and before the issuing of letters of administration or to recover damages for taking, detaining, or injuring personal property within the same period shall be computed from:

(1) the time of issuing such letters if they are issued within 5 years of the death;

(2) 5 years after the death if the letters have not then been issued.

History: En. Sec. 545, C. Civ. Proc. 1895; re-en. Sec. 6462, Rev. C. 1907; re-en. Sec. 9052, R.C.M. 1921; re-en. Sec. 9052, R.C.M. 1935; R.C.M. 1947, 93-2706(part); amd. Sec. 22, Ch. 12, L. 1979.

Cross-References

Statutes of Limitation on decedent's cause of action — applicability, 72-3-123.

Personal representative — standing to sue, 72-3-604.

Part 4

Circumstances Which Extend Period of Limitations

27-2-401. When person entitled to bring action is under a disability. (1) If a person entitled to bring an action mentioned in part 2, except 27-2-211(3), is, at the time the cause of action accrues, either a minor, seriously mentally ill, or imprisoned on a criminal charge or under a sentence for a term less than for life, the time of such disability is not a part of the time limited for commencing the action. However, the time so limited cannot be extended more than 5 years by any such disability except minority.

(2) If an action is barred by 27-2-304, any of the heirs, devisees, or creditors who at the time of the transaction upon which the action might have been founded was under one of the disabilities mentioned in subsection (1) may, within 5 years after the cessation of such disability, maintain an action to recover damages. In such action he may recover such sum or the value of such property as he would have received upon the final distribution of the estate if an action had been seasonably commenced by the personal representative.

(3) No person may avail himself of a disability unless it existed when his right of action or entry accrued.

(4) When two or more disabilities coexist at the time the right of action or entry accrues, the limitation does not attach until all are removed.

History: (1)En. Sec. 14, p. 468, Bannack Stat.; re-en. Sec. 12, p. 517, Cod. Stat. 1871; repealed Sec. 674, p. 215, L. 1877; re-en. Sec. 542, C. Civ. Proc. 1895; re-en. Sec. 6459, Rev. C. 1907; re-en. Sec. 9049, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 352; re-en. Sec. 9049, R.C.M. 1935; amd. Sec. 2, Ch. 220, L. 1977; Sec. 93-2703, R.C.M. 1947; (2)En. Sec. 545, C. Civ. Proc. 1895; re-en. Sec. 6462, Rev. C. 1907; re-en. Sec. 9052, R.C.M. 1921; re-en. Sec. 9052, R.C.M. 1935; Sec. 93-2706, R.C.M. 1947; (3)En. Sec. 19, p. 469, Bannack Stat.; re-en. Sec. 17, p. 518, Cod. Stat. 1871; rep. Sec. 674, p. 215, L. 1877; re-en. Sec. 549, C. Civ. Proc. 1895; re-en. Sec. 6466, Rev. C. 1907; re-en. Sec. 9056, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 357; re-en. Sec. 9056, R.C.M. 1935; Sec. 93-2710, R.C.M. 1947; (4)En. Sec. 20, p. 469, Bannack Stat.; re-en. Sec. 18, p. 518, Cod. Stat. 1871; rep. Sec. 674, p. 215, L. 1877; re-en. Sec. 550, C. Civ. Proc. 1895; re-en. Sec. 6467, Rev. C. 1907; re-en. Sec. 9057, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 358; re-en. Sec. 9057, R.C.M. 1935; Sec. 93-2711, R.C.M. 1947; R.C.M. 1947, 93-2703, 93-2706(part), 93-2710, 93-2711; amd. Sec. 23, Ch. 12, L. 1979; amd. Sec. 3, Ch. 441, L. 1987.

Compiler's Comments

1987 Amendment: At end of (1), after "minority", deleted "or, in any case, more than 1 year after the disability ceases"; at end of (2) substituted "personal representative" for "executor or administrator"; and made minor changes in phraseology.

27-2-402. When defendant is out of state. When the cause of action accrues against a person who is out of the state and cannot be served with process, the action may be commenced within the term herein limited after his return to the state; and if after the cause of action accrues he departs from the state and cannot be served with process, the time of his absence is not part of the time limited for the commencement of the action.

History: En. Sec. 13, p. 468, Bannack Stat.; re-en. Sec. 11, p. 517, Cod. Stat. 1871; re-en. Sec. 50, p. 50, L. 1877; re-en. Sec. 50, 1st Div. Rev. Stat. 1879; re-en. Sec. 50, 1st Div. Comp. Stat. 1887; re-en. Sec. 541, C. Civ. Proc. 1895; re-en. Sec. 6458, Rev. C. 1907; re-en. Sec. 9048, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 351; re-en. Sec. 9048, R.C.M. 1935; R.C.M. 1947, 93-2702; amd. Sec. 4, Ch. 441, L. 1987.

Compiler's Comments

1987 Amendment: In two places, after "state", inserted "and cannot be served with process" and made minor changes in phraseology.

27-2-403. Actions involving aliens in time of war. When a person is an alien subject or a citizen of a country at war with the United States, the time of the continuance of the war is not part of the period limited for the commencement of the action.

History: En. Sec. 16, p. 469, Bannack Stat.; re-en. Sec. 14, p. 517, Cod. Stat. 1871; rep. Sec. 674, p. 215, L. 1877; re-en. Sec. 546, C. Civ. Proc. 1895; re-en. Sec. 6463, Rev. C. 1907; re-en. Sec. 9053, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 354; re-en. Sec. 9053, R.C.M. 1935; R.C.M. 1947, 93-2707.

27-2-404. When a party dies before action commenced. (1) If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof and the cause of action survives, an action may be commenced by his representatives after the expiration of that time and within 1 year from his death.

(2) If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof and the cause of action survives, an action may be commenced against his representatives after the expiration of that time and within 1 year after the issuing of letters testamentary or of administration. If a person against whom a cause of action exists dies without the state, the time which elapses between his death and the expiration of 1 year after the issuing within the state of letters testamentary or letters of administration is not a part of the time limited for the commencement of an action therefor against his executor or administrator.

History: Ap. p. Sec. 15, p. 468, Bannack Stat.; re-en. Sec. 13, p. 517, Cod. Stat. 1871; repealed Sec. 674, p. 215, L. 1877; re-en. Sec. 543, C. Civ. Proc. 1895; re-en. Sec. 6460, Rev. C. 1907; re-en. Sec. 9050, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 353; re-en. Sec. 9050, R.C.M. 1935; Sec. 93-2704, R.C.M. 1947; Ap. p. Sec. 544, C. Civ. Proc. 1895; re-en. Sec. 6461, Rev. C. 1907; re-en. Sec. 9051, R.C.M. 1921; re-en. Sec. 9051, R.C.M. 1935; Sec. 93-2705, R.C.M. 1947; R.C.M. 1947, 93-2704, 93-2705.

27-2-405. When controversy submitted to arbitration. Where the persons who might be adverse parties in an action have entered into a written agreement to submit to arbitration or to refer the cause of action or a controversy in which it might be available or have entered into a written submission thereof to arbitrators and, before an award or other determination thereupon, the agreement or submission is revoked, so as to render it ineffectual, by the death of either party thereto or by the act of the person against whom the action might have been brought or the execution thereof or the remedy upon an award or other determination thereunder is stayed by injunction or other order procured by him from a competent court or judge, the time which has elapsed between the entering into the written submission or agreement and the revocation thereof or the expiration of the stay is not a part of the time limited for the commencement of the action.

History: En. Sec. 552, C. Civ. Proc. 1895; re-en. Sec. 6469, Rev. C. 1907; re-en. Sec. 9059, R.C.M. 1921; re-en. Sec. 9059, R.C.M. 1935; R.C.M. 1947, 93-2713.

Cross-References

Arbitration, Title 27, ch. 5.

27-2-406. When action stayed by injunction or other order or statutory prohibition. When the commencement of an action is stayed by injunction or other order of the court or judge or statutory prohibition, the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.

History: **En. Sec. 18, p. 469, Bannack Stat.; re-en. Sec. 16, p. 518, Cod. Stat. 1871; re-en. Sec. 52, p. 50, L. 1877; re-en. Sec. 52, 1st Div. Rev. Stat. 1879; re-en. Sec. 52, 1st Div. Comp. Stat. 1887; amd. Sec. 548, C. Civ. Proc. 1895; re-en. Sec. 6465, Rev. C. 1907; re-en. Sec. 9055, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 356; re-en. Sec. 9055, R.C.M. 1935; R.C.M. 1947, 93-2709.**

27-2-407. When action terminated or judgment reversed. If an action is commenced within the time limited therefor and a judgment therein is reversed on appeal without awarding a new trial or the action is terminated in any other manner than by a voluntary discontinuance, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff or, if he dies and the cause of action survives, his representative may commence a new action for the same cause after the expiration of the time so limited and within 1 year after such a reversal or termination.

History: **En. Sec. 17, p. 469, Bannack Stat.; re-en. Sec. 15, p. 518, Cod. Stat. 1871; re-en. Sec. 51, p. 50, L. 1877; re-en. Sec. 51, 1st Div. Rev. Stat. 1879; re-en. Sec. 51, 1st Div. Comp. Stat. 1887; amd. Sec. 547, C. Civ. Proc. 1895; re-en. Sec. 6464, Rev. C. 1907; re-en. Sec. 9054, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 355; re-en. Sec. 9054, R.C.M. 1935; R.C.M. 1947, 93-2708.**

27-2-408. Assertion of counterclaim. (1) A defendant is entitled to assert against a plaintiff, by pleading or amendment, any counterclaim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against him.

(2) The time period between the commencement and termination of an action is not part of the time limit for the commencement of an action by a defendant to recover for a counterclaim or to interpose it in that action or another action by the same plaintiff or a successor arising out of the same transaction or occurrence.

History: **En. Sec. 553, C. Civ. Proc. 1895; re-en. Sec. 6470, Rev. C. 1907; re-en. Sec. 9060, R.C.M. 1921; re-en. Sec. 9060, R.C.M. 1935; R.C.M. 1947, 93-2714; amd. Sec. 24, Ch. 12, L. 1979; amd. Sec. 5, Ch. 441, L. 1987.**

Compiler's Comments

1987 Amendment: Substituted present language for former language that read: "Whenever a defendant in an action has interposed an answer in support of which he would be entitled to rely at the trial upon a defense or counterclaim then existing in his favor the remedy upon which, at the time of the commencement of the action, was not barred by any provision of this code and the complaint is dismissed or the action is discontinued or abates because of the plaintiff's death, the time between the commencement and the termination of the action is not a part of the time limited for the commencement of an action by the defendant to recover for the cause of action so interposed as a defense or to interpose the same defense in another action brought by the same plaintiff or a person deriving title from or under him."

27-2-409. Acknowledgment of debt or part payment. (1) An acknowledgment or the part payment of a debt is sufficient evidence to cause the relevant statute of limitations to begin running anew.

(2) An acknowledgment must be contained in some writing signed by the party to be charged thereby.

(3) Part payment is any payment of principal or interest.

History: **En. Sec. 21, p. 469, Bannack Stat.; re-en. Sec. 19, p. 518, Cod. Stat. 1871; re-en. Sec. 53, p. 50, L. 1877; re-en. Sec. 53, 1st Div. Rev. Stat. 1879; re-en. Sec. 53, 1st Div. Comp. Stat. 1887; amd. Sec. 555, C. Civ. Proc. 1895; re-en. Sec. 6472, Rev. C. 1907; re-en. Sec. 9062, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 360; re-en. Sec. 9062, R.C.M. 1935; R.C.M. 1947, 93-2716; amd. Sec. 25, Ch. 12, L. 1979; amd. Sec. 6, Ch. 441, L. 1987.**

Compiler's Comments

1987 Amendment: Substituted present language for former language that read: "No acknowledgment or promise is evidence of a new or continuing contract sufficient to cause the relevant statute of limitations to begin running anew unless the same is contained in some writing signed by the party to be charged thereby. However, this section does not alter the effect of any payment of principal or interest, which payment is equivalent to a new promise in writing, duly signed, to pay the residue of the debt."

CHAPTERS 3 AND 4

RESERVED

CHAPTER 5

UNIFORM ARBITRATION ACT

Part 1 — Submission to Arbitration

27-5-101 through 27-5-105. Repealed.
27-5-106 through 27-5-110 reserved.
27-5-111. Short title.
27-5-112. Uniformity of interpretation.
27-5-113. Application to labor agreements.
27-5-114. Validity of arbitration agreement — exceptions.
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27-5-315 through 27-5-320 reserved.
27-5-321. Applications to court — how made.
27-5-322. Jurisdiction of district court.
27-5-323. Venue.
27-5-324. Appeals.

Chapter Cross-References

Pleading arbitration as an affirmative defense, Rule 8(c), M.R.Civ.P. (see Title 25, ch. 20).

Application of Montana Rules of Civil Procedure to this chapter, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Part 1

Submission to Arbitration

Part Cross-References

Multistate Tax Compact — Article IX arbitration provisions, 15-1-601.

Arbitration of stream portage rights, 23-2-311.

Statute of Limitations tolled by submission to arbitration, 27-2-405.

Medical malpractice claims — effect of arbitration, 27-6-105.

Arbitration of farm mutual insurance claims, 33-4-411.

Arbitration of new motor vehicle warranty disputes, 61-4-515.

Arbitration of threshers' lien claims, 71-3-801.

Arbitration of hail insurance claims, 80-2-243.

Arbitration of watercourse construction projects adversely affecting fish and game habitat, 87-5-505.

27-5-101 through 27-5-105. Repealed. Sec. 28, Ch. 684, L. 1985.

Compiler's Comments

Histories of Repealed Sections:

27-5-101. En. Sec. 302, p. 106, Bannack Stat.; re-en. Sec. 358, p. 207, L. 1867; re-en. Sec. 432, p. 122, Cod. Stat. 1871; re-en. Sec. 459, p. 163, L. 1877; re-en. Sec. 459, 1st Div. Rev. Stat. 1879; re-en. Sec. 472, 1st Div. Comp. Stat. 1887; re-en. Sec. 2270, C. Civ. Proc. 1895; re-en. Sec. 7365, Rev. C. 1907; re-en. Sec. 9972, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1281; re-en. Sec. 9972, R.C.M. 1935; R.C.M. 1947, 93-201-1.

27-5-102. En. Sec. 303, p. 106, Bannack Stat.; re-en. Sec. 359, p. 207, L. 1867; re-en. Sec. 433, p. 122, Cod. Stat. 1871; re-en. Sec. 460, p. 163, L. 1877; re-en. Sec. 460, 1st Div. Rev. Stat. 1879; re-en. Sec. 473, 1st Div. Comp. Stat. 1887; re-en. Sec. 2271, C. Civ. Proc. 1895; re-en. Sec. 7366, Rev. C. 1907; re-en. Sec. 9973, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1282; re-en. Sec. 9973, R.C.M. 1935; R.C.M. 1947, 93-201-2.

27-5-103. En. Sec. 304, p. 107, Bannack Stat.; re-en. Sec. 360, p. 207, L. 1867; re-en. Sec. 434, p. 122, Cod. Stat. 1871; re-en. Sec. 461, p. 163, L. 1877; re-en. Sec. 461, 1st Div. Rev. Stat. 1879; re-en. Sec. 474, 1st Div. Comp. Stat. 1887; re-en. Sec. 2272, C. Civ. Proc. 1895; re-en. Sec. 7367, Rev. C. 1907; re-en. Sec. 9974, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1283; re-en. Sec. 9974, R.C.M. 1935; R.C.M. 1947, 93-201-3(part).

27-5-104. En. Sec. 304, p. 107, Bannack Stat.; re-en. Sec. 360, p. 207, L. 1867; re-en. Sec. 434, p. 122, Cod. Stat. 1871; re-en. Sec. 461, p. 163, L. 1877; re-en. Sec. 461, 1st Div. Rev. Stat. 1879; re-en. Sec. 474, 1st Div. Comp. Stat. 1887; re-en. Sec. 2272, C. Civ. Proc. 1895; re-en. Sec. 7367, Rev. C. 1907; re-en. Sec. 9974, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1283; re-en. Sec. 9974, R.C.M. 1935; R.C.M. 1947, 93-201-3(part).

27-5-105. En. Sec. 311, p. 109, Bannack Stat.; re-en. Sec. 367, p. 209, L. 1867; re-en. Sec. 441, p. 123, Cod. Stat. 1871; re-en. Sec. 468, p. 165, L. 1877; re-en. Sec. 468, 1st Div. Rev. Stat. 1879; re-en. Sec. 481, 1st Div. Comp. Stat. 1887; re-en. Sec. 2279, C. Civ. Proc. 1895; re-en. Sec. 7374, Rev. C. 1907; re-en. Sec. 9981, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1290; re-en. Sec. 9981, R.C.M. 1935; R.C.M. 1947, 93-201-10.

27-5-106 through 27-5-110 reserved.

27-5-111. Short title. This chapter may be cited as the "Uniform Arbitration Act".

History: **En. Sec. 1, Ch. 684, L. 1985.**

27-5-112. Uniformity of interpretation. This chapter must be construed to effectuate its general purpose to make uniform the law of those states that enact it.

History: **En. Sec. 2, Ch. 684, L. 1985.**

27-5-113. Application to labor agreements. Arbitration agreements between employers and employees or between their respective representatives are valid and enforceable and may be subject to all or portions of this chapter if the agreement so specifies, except 27-5-312(1) and (3) through (5) and 27-5-313 apply in every case.

History: **En. Sec. 3, Ch. 684, L. 1985.**

Cross-References

Arbitration of unlawful termination of public employee, 2-18-621.

Arbitration of public employees' collective bargaining issue, 39-31-306, 39-31-310, 39-31-311.

Arbitration of firefighters' collective bargaining issue, Title 39, ch. 34, part 1.

27-5-114. Validity of arbitration agreement — exceptions. (1) A written agreement to submit an existing controversy to arbitration is valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract.

(2) A written agreement to submit to arbitration any controversy arising between the parties after the contract is made is valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract. This subsection does not apply to:

(a) claims arising out of personal injury, whether based on contract or tort;

(b) any agreement concerning or relating to insurance policies or annuity contracts except for those contracts between insurance companies;

(c) any contract by an individual for the acquisition of real or personal property, services, or money or credit where the total consideration to be paid or furnished by the individual is $35,000 or less; and

(d) claims for workers' compensation.

(3) Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters on the first page of the contract; and unless such notice is displayed thereon, the contract may not be subject to arbitration.

History: En. Sec. 4, Ch. 684, L. 1985.

Cross-References

Arbitration of unlawful termination of public employee, 2-18-621.

No specific performance of arbitration agreement prior to 1985, 27-1-412 (prior to 1985 amendment).

Statute of Limitations tolled by submission to arbitration, 27-2-405.

Illegal objects and provisions of contracts, Title 28, ch. 2, part 7.

Partner's authority to submit partnership claim to arbitration, 35-10-301.

Arbitration of public employees' collective bargaining issue, 39-31-306, 39-31-310, 39-31-311.

Arbitration of firefighters' collective bargaining issue, Title 39, ch. 34, part 1.

Arbitration of new motor vehicle warranty disputes, 61-4-515.

Arbitration of threshers' lien claims, 71-3-801.

27-5-115. Proceedings to compel or stay arbitration. (1) On the application of a party showing an agreement described in 27-5-114 and the opposing party's refusal to arbitrate, the district court shall order the parties to proceed with arbitration; but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of that issue raised and shall order arbitration if it finds for the applying party or deny the application if it finds for the opposing party.

(2) On application, the district court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if the court finds for the applying party. If the court finds for the opposing party, it shall order the parties to proceed to arbitration.

(3) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection (1), the application must be made in that court. Otherwise, and subject to 27-5-323, the application may be made in any court of competent jurisdiction.

(4) An action or proceeding involving an issue subject to arbitration must be stayed if an order or application for arbitration has been made under this section. If an issue is severable, the stay may be with respect to the severable issue only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(5) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or good faith or because no fault or grounds for the claim sought to be arbitrated have been shown.

History: **En. Sec. 5, Ch. 684, L. 1985.**

Cross-References

No specific performance of arbitration agreement prior to 1985, 27-1-412 (prior to 1985 amendment).

Statute of Limitations tolled by submission to arbitration, 27-2-405.

Partner's authority to submit partnership claim to arbitration, 35-10-301.

Arbitration of new motor vehicle warranty disputes, 61-4-515.

Part 2

Action by Arbitrators

27-5-201 through 27-5-203. Repealed. Sec. 28, Ch. 684, L. 1985.

Compiler's Comments

Histories of Repealed Sections:

27-5-201. En. Sec. 306, p. 107, Bannack Stat.; re-en. Sec. 362, p. 208, L. 1867; re-en. Sec. 436, p. 122, Cod. Stat. 1871; re-en. Sec. 463, p. 164, L. 1877; re-en. Sec. 463, 1st Div. Rev. Stat. 1879; re-en. Sec. 476, 1st Div. Comp. Stat. 1887; re-en. Sec. 2274, C. Civ. Proc. 1895; re-en. Sec. 7369, Rev. C. 1907; re-en. Sec. 9976, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1285; re-en. Sec. 9976, R.C.M. 1935; R.C.M. 1947, 93-201-5(part).

27-5-202. Ap. p. Sec. 305, p. 107, Bannack Stat.; re-en. Sec. 361, p. 208, L. 1867; re-en. Sec. 435, p. 122, Cod. Stat. 1871; re-en. Sec. 462, p. 164, L. 1877; re-en. Sec. 462, 1st Div. Rev. Stat. 1879; re-en. Sec. 475, 1st Div. Comp. Stat. 1887; re-en. Sec. 2273, C. Civ. Proc. 1895; re-en. Sec. 7368, Rev. C. 1907; re-en. Sec. 9975, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1284; re-en. Sec. 9975, R.C.M. 1935; Sec. 93-201-4, R.C.M. 1947; Ap. p. Sec. 306, p. 107, Bannack Stat.; re-en. Sec. 362, p. 208, L. 1867; re-en. Sec. 436, p. 122, Cod. Stat. 1871; re-en. Sec. 463, p. 164, L. 1877; re-en. Sec. 463, 1st Div. Rev. Stat. 1879; re-en. Sec. 476, 1st Div. Comp. Stat. 1887; re-en. Sec. 2274, C. Civ. Proc. 1895; re-en. Sec. 7369, Rev. C. 1907; re-en. Sec. 9976, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1285; re-en. Sec. 9976, R.C.M. 1935; Sec. 93-201-5, R.C.M. 1947; R.C.M. 1947, 93-201-4, 93-201-5(part).

27-5-203. En. Sec. 307, p. 108, Bannack Stat.; re-en. Sec. 363, p. 208, L. 1867; re-en. Sec. 437, p. 123, Cod. Stat. 1871; re-en. Sec. 464, p. 164, L. 1877; re-en. Sec. 464, 1st Div. Rev. Stat. 1879; re-en. Sec. 477, 1st Div. Comp. Stat. 1887; re-en. Sec. 2275, C. Civ. Proc. 1895; re-en. Sec. 7370, Rev. C. 1907; re-en. Sec. 9977, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1286; re-en. Sec. 9977, R.C.M. 1935; R.C.M. 1947, 93-201-6(part).

27-5-204 through 27-5-210 reserved.

27-5-211. Appointment of arbitrators. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method is provided, the agreed method fails or for any reason cannot be followed, or an appointed arbitrator fails or is unable to act and his successor has not been duly appointed, the district court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

History: **En. Sec. 6, Ch. 684, L. 1985.**

27-5-212. Majority action by arbitrators. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this chapter.

History: **En. Sec. 7, Ch. 684, L. 1985.**

27-5-213. Hearing. Unless otherwise provided by the agreement, the following apply:

(1) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by certified mail not less than 5 days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced, notwithstanding the failure of a party duly notified to appear. The district court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(2) The parties are entitled to be heard, present evidence material to the controversy, and cross-examine witnesses appearing at the hearing.

(3) The hearing must be conducted by all the arbitrators, but a majority may determine any question and render a final award. If during the course of the hearing an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

History: **En. Sec. 8, Ch. 684, L. 1985.**

27-5-214. Representation by attorney. A party has the right to be represented by an attorney at any proceeding or hearing under this chapter. A waiver of this right prior to the proceeding or hearing is ineffective.

History: **En. Sec. 9, Ch. 684, L. 1985.**

27-5-215. Witnesses, subpoenas, and depositions. (1) The arbitrators may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and may administer oaths. Subpoenas so issued must be served and, upon application to the district court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court.

(2) On the application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(3) All provisions of law compelling a person under subpoena to testify are applicable to persons subpoenaed under this chapter.

(4) Fees for attendance as a witness are the same as for a witness in the district court.

History: **En. Sec. 10, Ch. 684, L. 1985.**

27-5-216. Award. (1) The award must be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally by certified mail or as provided in the agreement.

(2) An award must be made within the time fixed by the agreement or, if no time is fixed, within such time as the district court orders on application of a party. The parties may extend the time, in writing, either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

History: **En. Sec. 11, Ch. 684, L. 1985.**

Cross-References

Arbitration and award as affirmative defense, Rule 8(c), M.R.Civ.P. (see Title 25, ch. 20).

No specific performance of arbitration agreement prior to 1985, 27-1-412 (prior to 1985 amendment).

Partner's authority to submit partnership claim to arbitration, 35-10-301.

Arbitration of new motor vehicle warranty disputes, 61-4-515.

27-5-217. Change of award by arbitrators. On the application of a party or, if an application to the court is pending under 27-5-311, 27-5-312, or 27-5-313, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in 27-5-313(1)(a) and (1)(c) or for the purpose of clarifying the award. The application must be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given immediately to the opposing party, stating that he must serve his objections thereto, if any, within 10 days from the notice. A modified or corrected award is subject to the provisions of 27-5-311 through 27-5-313.

History: **En. Sec. 12, Ch. 684, L. 1985.**

27-5-218. Fees and expenses of arbitration. Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, must be paid as provided in the award.

History: **En. Sec. 13, Ch. 684, L. 1985.**

Cross-References

Cost of arbitration between firefighter and public employer, 39-34-106.

Part 3

Procedure Following Award

27-5-301 through 27-5-304. Repealed. Sec. 28, Ch. 684, L. 1985.

Compiler's Comments

Histories of Repealed Sections:

27-5-301. En. Sec. 308, p. 108, Bannack Stat.; re-en. Sec. 364, p. 208, L. 1867; re-en. Sec. 438, p. 123, Cod. Stat. 1871; re-en. Sec. 465, p. 165, L. 1877; re-en. Sec. 465, 1st Div. Rev. Stat. 1879; re-en. Sec. 478, 1st Div. Comp. Stat. 1887; re-en. Sec. 2276, C. Civ. Proc. 1895; re-en. Sec. 7371, Rev. C. 1907; re-en. Sec. 9978, R.C.M.

1921; Cal. C. Civ. Proc. Sec. 1287; re-en. Sec. 9978, R.C.M. 1935; R.C.M. 1947, 93-201-7.

27-5-302. En. Sec. 309, p. 108, Bannack Stat.; re-en. Sec. 365, p. 209, L. 1867; re-en. Sec. 439, p. 123, Cod. Stat. 1871; re-en. Sec. 466, p. 165, L. 1877; re-en. Sec. 466, 1st Div. Rev. Stat. 1879; re-en. Sec. 479, 1st Div. Comp. Stat. 1887; re-en. Sec. 2277, C. Civ. Proc. 1895; re-en. Sec. 7372, Rev. C. 1907; re-en. Sec. 9979, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1288; re-en. Sec. 9979, R.C.M. 1935; R.C.M. 1947, 93-201-8.

27-5-303. En. Sec. 307, p. 108, Bannack Stat.; re-en. Sec. 363, p. 208, L. 1867; re-en. Sec. 437, p. 123, Cod. Stat. 1871; re-en. Sec. 464, p. 164, L. 1877; re-en. Sec. 464, 1st Div. Rev. Stat. 1879; re-en. Sec. 477, 1st Div. Comp. Stat. 1887; re-en. Sec. 2275, C. Civ. Proc. 1895; re-en. Sec. 7370, Rev. C. 1907; re-en. Sec. 9977, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1286; re-en. Sec. 9977, R.C.M. 1935; R.C.M. 1947, 93-201-6(part); amd. Sec. 26, Ch. 12, L. 1979.

27-5-304. En. Sec. 310, p. 109, Bannack Stat.; re-en. Sec. 366, p. 209, L. 1867; re-en. Sec. 440, p. 123, Cod. Stat. 1871; re-en. Sec. 467, p. 165, L. 1877; re-en. Sec. 467, 1st Div. Rev. Stat. 1879; re-en. Sec. 480, 1st Div. Comp. Stat. 1887; re-en. Sec. 2278, C. Civ. Proc. 1895; re-en. Sec. 7373, Rev. C. 1907; re-en. Sec. 9980, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1289; re-en. Sec. 9980, R.C.M. 1935; R.C.M. 1947, 93-201-9.

27-5-305 through 27-5-310 reserved.

27-5-311. Confirmation of award by court. Upon the application of a party, the district court shall confirm an award unless within the time limits imposed in this chapter grounds are urged for vacating, modifying, or correcting the award, in which case the court shall proceed as provided in 27-5-312 and 27-5-313.

History: **En. Sec. 14, Ch. 684, L. 1985.**

27-5-312. Vacating an award. (1) Upon the application of a party, the district court shall vacate an award if:

(a) the award was procured by corruption, fraud, or other undue means;

(b) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(c) the arbitrators exceeded their powers;

(d) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of 27-5-213, as to prejudice substantially the rights of a party; or

(e) there was no arbitration agreement and the issue was not adversely determined in proceedings under 27-5-115 and the party did not participate in the arbitration hearing without raising the objection.

(2) The fact that the relief was such that it could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.

(3) An application under this section must be made within 90 days after delivery of a copy of the award to the applicant, except that if it is predicated upon corruption, fraud, or other undue means, it must be made within 90 days after such grounds are known or should have been known.

(4) In vacating the award on grounds other than those stated in subsection (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or, if the agreement does not provide a method of selection, by the court in accordance with 27-5-211 or, if the award is vacated on grounds set forth in subsection (1)(c) or (1)(d), the court may order a rehearing before the arbitrators who made the award or their successors

appointed in accordance with 27-5-211. The time within which the agreement requires the award to be made is applicable to the rehearing and commences on the date of the order for rehearing.

(5) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

History: En. Sec. 15, Ch. 684, L. 1985.

27-5-313. Modification or correction of award by court. (1) Upon application made within 90 days after delivery of a copy of the award to the applicant, the district court shall modify or correct the award if:

(a) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;

(b) the arbitrators awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(c) the award is imperfect in a matter of form not affecting the merits of the controversy.

(2) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

History: En. Sec. 16, Ch. 684, L. 1985.

27-5-314. Judgment on award — costs. (1) Upon the granting of an order confirming, modifying, or correcting an award, judgment must be entered in conformity with the order and be enforced as any other judgment. Costs of the application and of the proceedings subsequent thereto and disbursements may be awarded by the court.

(2) The judgment may be docketed as if rendered in an action.

History: En. Sec. 17, Ch. 684, L. 1985.

27-5-315 through 27-5-320 reserved.

27-5-321. Applications to court — how made. Except as otherwise provided, an application to the court under this chapter must be by motion and must be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order must be served in the manner provided by law for the service of a summons in an action.

History: En. Sec. 18, Ch. 684, L. 1985.

27-5-322. Jurisdiction of district court. The making of an agreement described in 27-5-114 providing for arbitration in this state confers jurisdiction on the district court to enforce the agreement under this chapter and to enter judgment on an award under the agreement.

History: En. Sec. 19, Ch. 684, L. 1985.

Cross-References

Statute of Limitations tolled by submission to arbitration, 27-2-405.

27-5-323. Venue. An initial application must be made to the court of the county in which the agreement provides the arbitration hearing must be held or, if the hearing has been held, in the county in which it was held. Otherwise, the application must be made in the county where the adverse party resides or has a place of business or, if he has no residence or place of business in this state, to the court of any county. All subsequent applications must be made to the court hearing the initial application unless the court otherwise directs. No agreement concerning venue involving a resident of this state is valid unless the agreement requires that arbitration occur within the state of Montana. This requirement may only be waived upon the advice of counsel as evidenced by counsel's signature thereto.

History: En. Sec. 20, Ch. 684, L. 1985.

27-5-324. Appeals. (1) An appeal may be taken from:

(a) an order denying an application to compel arbitration made under 27-5-115;

(b) an order granting an application to stay arbitration made under 27-5-115(2);

(c) an order confirming or denying confirmation of an award;

(d) an order modifying or correcting an award;

(e) an order vacating an award without directing a rehearing; or

(f) a judgment entered pursuant to the provisions of this chapter.

(2) The appeal must be taken in the manner and to the same extent as from orders or judgments in a civil action in district court.

History: En. Sec. 21, Ch. 684, L. 1985.

Cross-References

Statute of Limitations tolled by submission to arbitration, 27-2-405.

CHAPTER 6

MONTANA MEDICAL LEGAL PANEL ACT

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Chapter Cross-References

Nonliability for peer review, Title 37, ch. 2, part 2.

Unprofessional conduct by physician, 37-3-322.

Revocation or suspension of physician's license, 37-3-323.

Penalties for violations of physician's licensing law, 37-3-325.

Injunctive relief for violations of physician's licensing laws, 37-3-326.

Part 1

General Provisions

27-6-101. Short title. This chapter may be cited as the "Montana Medical Legal Panel Act".

History: En. 17-1301 by Sec. 1, Ch. 449, L. 1977; R.C.M. 1947, 17-1301; amd. Sec. 1, Ch. 376, L. 1983.

27-6-102. Purpose. The purpose of this chapter is to prevent where possible the filing in court of actions against health care providers and their employees for professional liability in situations where the facts do not permit at least a reasonable inference of malpractice and to make possible the fair and equitable disposition of such claims against health care providers as are or reasonably may be well founded.

History: En. 17-1302 by Sec. 2, Ch. 449, L. 1977; R.C.M. 1947, 17-1302.

27-6-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Dentist" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the assessment:

(i) has as his principal residence or place of dental practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of dentistry; or

(b) for all other purposes, a person licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as his principal residence or place of dental practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render dental services and whose shareholders, partners, or owners were individual dentists licensed to practice dentistry under the provisions of Title 37, chapter 4.

(2) "Health care facility" means a facility (other than a university, college, or governmental infirmary) licensed as a health care facility under Title 50, chapter 5.

(3) "Health care provider" means a physician, a dentist, or a health care facility.

(4) "Hospital" means a hospital as defined in 50-5-101.

(5) "Malpractice claim" means any claim or potential claim of a claimant against a health care provider for medical or dental treatment, lack of medical or dental treatment, or other alleged departure from accepted standards of health care which proximately results in damage to the claimant, whether the claimant's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

(6) "Panel" means the Montana medical legal panel provided for in 27-6-104.

(7) "Physician" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the assessment:

(i) has as his principal residence or place of medical practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of medicine; or

(b) for all other purposes, a person licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as his principal residence or place of medical practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render medical services and whose shareholders, partners, or owners were individual physicians licensed to practice medicine under the provisions of Title 37, chapter 3.

History: **En. 17-1303 by Sec. 3, Ch. 449, L. 1977; R.C.M. 1947, 17-1303; amd. Sec. 2, Ch. 376, L. 1983; amd. Sec. 1, Ch. 332, L. 1985; amd. Sec. 1, Ch. 195, L. 1987.**

Compiler's Comments

1987 Amendment: Inserted definition of dentist; in definition of health care provider inserted "a dentist"; in definition of malpractice claim inserted references to dental treatment; and made minor changes in grammar.

Cross-References

Medicine — regulation and licensing, Title 37, ch. 3.

Hospitals and related facilities, Title 50, ch. 5.

27-6-104. Creation of panel. The Montana medical legal panel is created. The panel is attached to the Montana supreme court for administrative purposes only, except that 2-15-121(2) does not apply.

History: **En. 17-1304 by Sec. 4, Ch. 449, L. 1977; R.C.M. 1947, 17-1304(part); amd. Sec. 3, Ch. 376, L. 1983.**

27-6-105. What claims panel to review. The panel shall review all malpractice claims or potential claims against health care providers covered by this chapter except those claims subject to a valid arbitration agreement allowed by law or upon which suit has been filed prior to April 19, 1977.

History: **En. 17-1304 by Sec. 4, Ch. 449, L. 1977; R.C.M. 1947, 17-1304(part).**

Cross-References

Arbitration, Title 27, ch. 5.

27-6-106. Immunity of panel members and witnesses from civil liability. Panelists and witnesses are absolutely immune from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of the duties prescribed by this chapter.

History: **En. 17-1312 by Sec. 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1312(5).**

Cross-References

Liability exposure, Title 2, ch. 9, part 1.

Part 2

Administration of Act

27-6-201. Appointment, term, and salary of director. The director of the panel shall be appointed by the executive director of the Montana medical association, subject to the approval of the chief justice of the Montana supreme court. The director shall serve at the pleasure of, and the director's salary shall be set by, the executive director of the Montana medical association, subject to the approval of the chief justice.

History: **En. 17-1304 by Sec. 4, Ch. 449, L. 1977; R.C.M. 1947, 17-1304(4).**

27-6-202. Employment of staff and maintenance of offices. (1) The director, subject to the approval of the chief justice, may employ and fix the compensation for clerical and other assistants as he considers necessary.

(2) The panel shall maintain adequate offices, in which its records shall be kept and its official business transacted.

History: **En. 17-1305 by Sec. 5, Ch. 449, L. 1977; R.C.M. 1947, 17-1305(4), (5).**

27-6-203. Compensation of panel and staff. (1) All members of the panel shall be paid a salary in the amount of $40 an hour, under guidelines promulgated by the Montana supreme court.

(2) All members of the panel, the director, and his staff are entitled to travel expenses incurred while on the business of the panel, as provided in 2-18-501 through 2-18-503, but such expenses shall be approved by the director before payment is made.

History: **En. 17-1305 by Sec. 5, Ch. 449, L. 1977; R.C.M. 1947, 17-1305(1), (2).**

27-6-204. Authority to adopt rules. The director, in consultation with the state bar of Montana and subject to approval of the supreme court, is authorized to adopt and publish rules of procedure necessary to implement and carry out the duties of the medical review panel. No rules may be adopted, however, which require a party to make a monetary payment as a condition to bringing a malpractice claim before the medical review panel.

History: **En. 17-1313 by Sec. 13, Ch. 449, L. 1977; R.C.M. 1947, 17-1313.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

27-6-205. Powers of panel. The panel may provide for the administration of oaths, the receipt of claims filed, the promulgation of forms required by this chapter, the issuance of subpoenas in connection with the administration of this chapter, and the performance of all other acts required to fairly and effectively administer this chapter.

History: **En. 17-1305 by Sec. 5, Ch. 449, L. 1977; R.C.M. 1947, 17-1305(3).**

27-6-206. Funding. (1) There is created a pretrial review fund to be administered by the director exclusively for the purposes stated in this chapter. The fund and any income from it shall be held in trust, deposited in an account, and invested and reinvested by the director with the prior approval of the director of the Montana medical association. The fund may not become a part of or revert to the general fund of this state but shall be open to auditing by the legislative auditor.

(2) To create the fund, an annual surcharge shall be levied on all health care providers. The amount of the assessment must be annually set by the director and must be apportioned among physicians, dentists, hospitals, and other health care providers by group. As to the group of all physicians, the group of all dentists, the group of all hospitals, and the group of all other

health care facilities, the amount of the assessment must be proportionate to the respective percentage of total health care providers brought before the panel that each group constitutes. The total number and group of health care providers brought before the panel must be determined from the annual report of the panel for the years preceding the year of assessment, as to all claims closed since April 19, 1977. The amount of the assessment for the group of all hospitals must be proportionately assessed against each hospital on the basis of each hospital's total number of licensed hospital beds, whether used or not, as reflected in the most recent compilation of the department of health and environmental sciences. The amount of the assessment for the group of all physicians must be equally assessed against all physicians. The amount of the assessment for the group of all dentists must be equally assessed against all dentists. The amount of the assessment for the group of all other health care facilities must be equally assessed against all other health care facilities. Surplus funds, if any, over and above the amount required for the annual administration of the chapter shall be retained by the director and used to finance the administration of this chapter in succeeding years, in which event the director shall reduce the annual assessment in subsequent years, commensurate with the proper administration of this chapter.

(3) The annual surcharge shall be paid on or before the date physicians' and dentists' annual registration or renewal fees are due under 37-3-313 and 37-4-307. All unpaid assessments bear a late charge fee equal to the judgment rate of interest. The late charge fee is part of the annual surcharge. The director has the same powers and duties in connection with the collection of and failure to pay the annual surcharge as the department of commerce has under 37-3-313 and 37-4-307 in connection with physicians' and dentists' annual registration or renewal fees.

History: En. 17-1306 by Sec. 6, Ch. 449, L. 1977; R.C.M. 1947, 17-1306(part); amd. Sec. 1, Ch. 6, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 4, Ch. 376, L. 1983; amd. Sec. 2, Ch. 332, L. 1985; amd. Sec. 2, Ch. 195, L. 1987.

Compiler's Comments

1987 Amendment: Inserted references throughout to dentists; and in (3) added references to renewal fees and cites to 37-4-307.

27-6-207. Panel audits. (1) The panel must be audited by or at the direction of the legislative auditor in accordance with the powers and duties set forth in 5-13-304 and 5-13-309. The audit must include a determination of the adequacy, sufficiency, and reasonableness of the annual surcharge or assessment provided for in 27-6-206.

(2) A copy of each audit report of the panel must be furnished to the supreme court.

(3) The cost of any audit of the panel performed pursuant to this section must be paid by the panel.

History: En. Sec. 1, Ch. 96, L. 1987.

Compiler's Comments

Implementation: Section 2, Ch. 96, L. 1987, provided: "The first audit to be conducted under 27-6-207 must be for the 2 fiscal years ending June 30, 1987."

Part 3

Preliminary Procedure

27-6-301. How cases submitted. Claimants shall submit a case for the consideration of the panel prior to filing a complaint in any district court or other court sitting in Montana by addressing an application, in writing, signed by the claimant or his attorney, to the director of the panel.

History: En. 17-1304 by Sec. 4, Ch. 449, L. 1977; R.C.M. 1947, 17-1304(3); amd. Sec. 3, Ch. 332, L. 1985.

27-6-302. Contents of application — waiver of confidentiality of medical and dental records. The application shall contain the following:

(1) a statement in reasonable detail of the elements of the health care provider's conduct which are believed to constitute a malpractice claim, the dates the conduct occurred, and the names and addresses of all physicians, dentists, and hospitals having contact with the claimant and all witnesses;

(2) a statement authorizing the panel to obtain access to all medical, dental, and hospital records and information pertaining to the claim and, for the purposes of its consideration of this matter only, waiving any privilege as to the contents of those records. Nothing in that statement may in any way be construed as waiving that privilege for any other purpose or in any other context, in or out of court.

History: En. 17-1307 by Sec. 7, Ch. 449, L. 1977; R.C.M. 1947, 17-1307(part); amd. Sec. 3, Ch. 195, L. 1987.

Compiler's Comments

1987 Amendment: In (1) added reference to dentists; and near beginning of (2) added "dental" to types of records and information.

27-6-303. Amendments to application. Amendments to the application may be authorized by rule.

History: En. 17-1307 by Sec. 7, Ch. 449, L. 1977; R.C.M. 1947, 17-1307(part); amd. Sec. 4, Ch. 332, L. 1985.

27-6-304. Copies of application to professional societies when vicarious liability claimed. In instances where applications are received employing a theory of respondeat superior or some other derivative theory of recovery, the director shall forward the application to the state professional societies, associations, or licensing boards of both the individual health care provider whose alleged malpractice caused the application to be filed and the health care provider named a respondent as employer, master, or principal.

History: En. 17-1308 by Sec. 8, Ch. 449, L. 1977; R.C.M. 1947, 17-1308(3).

27-6-305. Service on health care provider. Upon receipt of an application for review, the director or his delegate shall cause to be served a true copy of the application on the health care providers involved. Service shall be effected by mailing a certified copy of the application to the health care provider at the provider's last-known address, postage prepaid, by certified mail, return receipt requested.

History: En. 17-1308 by Sec. 8, Ch. 449, L. 1977; R.C.M. 1947, 17-1308(part); amd. Sec. 5, Ch. 376, L. 1983.

Cross-References
Montana Rules of Civil Procedure, Title 25, ch. 20.

27-6-306. Health care provider's appearance and answer — waiver of confidentiality of records. (1) If a health care provider involved chooses to retain legal counsel, his attorney shall informally enter his appearance with the director.

(2) The health care provider shall answer the application for review and shall submit a statement authorizing the panel to inspect all medical, dental, and hospital records and information pertaining to the application and, for the purposes of such inspection only, waiving any privilege as to the contents of those records. Nothing in the statement waives that privilege for any other purpose.

History: En. 17-1308 by Sec. 8, Ch. 449, L. 1977; R.C.M. 1947, 17-1308(part); amd. Sec. 4, Ch. 195, L. 1987.

Compiler's Comments
1987 Amendment: In (2) added "dental" to types of records and information.

Cross-References
Right to privacy, Art. II, sec. 10, Mont. Const.

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Doctor-patient privilege, 26-1-805.

Nonliability for peer review — evidential privilege — application to nonprofit corporations, 37-2-201.

27-6-307. Assistance to claimant in obtaining expert consultation. The panel director shall cooperate fully with the claimant in retaining, to consult with the claimant, upon payment of a reasonable fee by the claimant, in claims involving:

(1) a physician, a physician qualified in the field of medicine involved; or

(2) a dentist, a dentist qualified in the field of dentistry involved.

History: En. 17-1308 by Sec. 8, Ch. 449, L. 1977; R.C.M. 1947, 17-1308(4); amd. Sec. 5, Ch. 195, L. 1987.

Compiler's Comments
1987 Amendment: At end of introductory clause inserted "to consult with the claimant, upon payment of a reasonable fee by the claimant, in claims involving"; at beginning of (1) inserted "a physician"; at end of (1), after "involved", deleted "who will consult with the claimant upon payment of a reasonable fee by the claimant"; and inserted (2).

27-6-308. Director to furnish panel members with documents. At least 10 days prior to the hearing, the director shall furnish to each panel member copies of all claims, briefs, medical or dental records, and other documents the director considers necessary.

History: En. 17-1311 by Sec. 11, Ch. 449, L. 1977; R.C.M. 1947, 17-1311(8); amd. Sec. 6, Ch. 195, L. 1987.

Compiler's Comments
1987 Amendment: Inserted reference to dental records.

Part 4

Formation and Composition of Panel

27-6-401. Composition of panel. (1) Those eligible to sit on the panel are health care providers licensed pursuant to Montana law and residing in

Montana and the members of the state bar of Montana. Six panel members shall sit in review of each case. Three panel members who are physicians and three panel members who are attorneys shall sit in review of each case in which the claim is heard only against one or more physicians. Three panel members who are dentists and three panel members who are attorneys shall sit in review of each case in which the claim is heard only against one or more dentists. If the claim is heard only against one or more health care facilities, two of the panel members must be administrators of the same type of health care facility or facilities, one panel member must be a physician, and three panel members must be attorneys.

(2) In all other cases, two of the panel members must be physicians, one panel member must be an administrator of the same type of health care facility, and three panel members must be attorneys, except that when a claim is heard against a dentist, a dentist must be substituted for one of the physicians on the panel.

History: Ap. p. 17-1304 by Sec. 4, Ch. 449, L. 1977; Sec. 17-1304, R.C.M. 1947; Ap. p. 17-1309 by Sec. 9, Ch. 449, L. 1977; Sec. 17-1309, R.C.M. 1947; R.C.M. 1947, 17-1304(2), 17-1309(4), (5); amd. Sec. 5, Ch. 332, L. 1985; amd. Sec. 7, Ch. 195, L. 1987.

Compiler's Comments

1987 Amendment: In (1) inserted fourth sentence relating to members for a claim against a dentist; and at end of (2) inserted exception for a claim against a dentist.

Cross-References

"Health care provider" defined, 27-6-103.

Agency, Title 28, ch. 10.

Licensing of medical practitioners, Title 37, ch. 3.

Licensing of attorneys, Title 37, ch. 61.

27-6-402. Selection of panelists. (1) Application for review shall be promptly transmitted by the director to the directors of the health care provider's state professional society or association and the state bar, which shall, within 14 days from the date of transmittal of the application, each select 12 proposed panelists from which 3 will be selected.

(2) If no state professional society or association exists or if the health care provider does not belong to such a society or association, the director shall transmit the application to the health care provider's state licensing board, which shall in turn select 12 persons from the health care provider's profession and, where applicable, from persons specializing in the same field or discipline as the health care provider.

History: En. 17-1309 by Sec. 9, Ch. 449, L. 1977; R.C.M. 1947, 17-1309(1), (2); amd. Sec. 27, Ch. 12, L. 1979; amd. Sec. 6, Ch. 376, L. 1983.

27-6-403. Panel in cases involving multiple defendants. Whenever there are multiple defendants, the case against each health care provider may be reviewed by a separate panel or, at the discretion of the panel initially appointed or by stipulation of the parties, a single combined panel may review all the claims against all parties defendant.

History: En. 17-1309 by Sec. 9, Ch. 449, L. 1977; R.C.M. 1947, 17-1309(3).

27-6-404. Disqualification of panel member. (1) Any member shall disqualify himself from consideration of any case in which, by virtue of his circumstances, he feels his presence on the panel would be inappropriate, considering the purpose of the panel. The director may excuse a proposed panelist from serving.

(2) Whenever a party makes and files an affidavit that a panel member selected pursuant to this part cannot, according to the belief of the party making the affidavit, sit in review of the application with impartiality, that panel member may proceed no further. Another panel member must be selected by the health care provider's professional association or state licensing board or the state bar, as the case may be. A party may not disqualify more than three panel members in this manner in any single malpractice claim, and the affidavit must be filed within 15 days of the transmittal by the director, under 27-6-402, of the names of the panel members selected.

History: En. 17-1309 by Sec. 9, Ch. 449, L. 1977; R.C.M. 1947, 17-1309(6), (7); amd. Sec. 7, Ch. 376, L. 1983.

Part 5

Hearing Procedure

Part Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

27-6-501. Time and place of hearing. (1) A date, time, and place for hearing shall be fixed by the director subject to subsection (2), and prompt notice thereof shall be given to the parties involved, the attorneys, and the members of the panel. In no instance may the date set be more than 120 days after the transmittal by the director of the application for review unless the panel finds good cause exists for extending the period.

(2) Panel hearings may be held in any county the panel considers necessary or advisable. The county commissioners or other governing authority shall provide, upon request of the director of the panel, suitable facilities for any such hearing.

History: (1)En. 17-1310 by Sec. 10, Ch. 449, L. 1977; Sec. 17-1310, R.C.M. 1947; (2)En. 17-1305 by Sec. 5, Ch. 449, L. 1977; Sec. 17-1305, R.C.M. 1947; R.C.M. 1947, 17-1305(6), 17-1310.

27-6-502. Conduct of hearing. (1) At the time set for hearing, the claimant submitting the case for review shall be present and shall make a brief introduction of his case, including a resume of the facts constituting the alleged professional malpractice which he is prepared to prove. The health care provider against whom the claim is brought and his attorney may be present and may make an introductory statement of his case.

(2) Both parties may call witnesses to testify before the panel, which witnesses shall be sworn. Medical texts, journals, studies, and other documentary evidence relied upon by either party may be offered and admitted if relevant. Written statements of facts by treating health care providers may be reviewed.

(3) The hearing will be informal, and no official transcript may be made.

History: En. 17-1311 by Sec. 11, Ch. 449, L. 1977; R.C.M. 1947, 17-1311(1) thru (3).

27-6-503. Conclusion of hearing — supplemental hearing. (1) At the conclusion of the hearing, the panel may take the case under advisement or may request that additional facts, records, witnesses, or other information be obtained and presented to it at a supplemental hearing, which shall be set for a date and time certain, not longer than 30 days from the date of the original hearing unless the claimant or his attorney consents in writing to a longer period.

(2) Any supplemental hearing shall be held in the same manner as the original hearing, and the parties concerned and their attorneys may be present.

History: En. 17-1311 by Sec. 11, Ch. 449, L. 1977; R.C.M. 1947, 17-1311(4), (5); amd. Sec. 28, Ch. 12, L. 1979.

Part 6

Deliberations and Decision of Panel

27-6-601. Selection of chairman. At or prior to the time set for the hearing, the attorney members of the panel shall select a chairman who shall be an attorney and who shall preside over the panel deliberations.

History: En. 17-1312 by Sec. 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1312(part).

27-6-602. Questions panel must decide. Upon consideration of all the relevant material, the panel shall decide whether there is:

(1) substantial evidence that the acts complained of occurred and that they constitute malpractice; and

(2) a reasonable medical probability that the patient was injured thereby.

History: En. 17-1312 by Sec. 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1312(part).

27-6-603. Deliberations to be secret — voting. The deliberations of the panel are confidential. All votes of the panel on the questions for discussion shall be by secret ballot. The decision shall be by a majority vote of those voting members of the panel who sat on the entire case.

History: En. 17-1312 by Sec. 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1312(part).

27-6-604. Form and content of decision. The decision shall in every case be signed for the panel by the chairman and shall contain only the conclusions reached by a majority of its members and shall list the number of members, if any, dissenting therefrom. The majority may briefly explain the reasoning and the basis for their decision, and the dissenters may likewise explain the reason for disagreement.

History: En. 17-1312 by Sec. 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1312(3).

27-6-605. Decision to be filed and copies sent to parties, attorneys, and licensing board. The decision shall be communicated in writing to the parties and attorneys concerned, and a copy thereof shall be retained in the permanent files of the panel. A copy of the decision shall be sent to the health care provider's professional licensing board.

History: En. 17-1312 by Sec. 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1312(part); amd. Sec. 29, Ch. 12, L. 1979.

Cross-References

Board of Medical Examiners, 2-15-1841.

27-6-606. Decision not binding — settlement agreements. The panel's decision is without administrative or judicial authority and is not binding upon any party. The panel may recommend an award, approve settlement agreements, and discuss the same, all in a manner not inconsistent with this part, and all such approved settlement agreements are binding on the parties.

History: En. 17-1312 by Sec. 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1312(6).

Part 7

Effect of Proceedings in Court Action — Confidentiality

27-6-701. No court action before application to and decision by panel. No malpractice claim may be filed in any court against a health care provider before an application is made to the panel and its decision is rendered.

History: En. 17-1307 by Sec. 7, Ch. 449, L. 1977; R.C.M. 1947, 17-1307(1).

Cross-References

Administration of justice — access to courts, Art. II, sec. 16, Mont. Const.

27-6-702. Tolling of statute of limitations. The running of the applicable limitation period in a malpractice claim is tolled upon receipt by the director of the application for review as to all health care providers named in the application as parties to the panel proceeding and as to all other persons or entities named in the application as necessary or proper parties for any court action which might subsequently arise out of the same factual circumstances set forth in the application. The running of the applicable limitation period in a malpractice claim does not begin again until 30 days after either an order of dismissal, with or without prejudice against refiling, is issued from the panel chairman, or from the director upon the consent of the parties to the claim, or the panel's final decision, whichever occurs first, is entered in the permanent files of the panel and a copy is served upon the complainant or his attorney if he is represented by counsel, by certified mail.

History: En. 17-1314 by Sec. 14, Ch. 449, L. 1977; R.C.M. 1947, 17-1314; amd. Sec. 6, Ch. 332, L. 1985.

Cross-References

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

Statute of Limitations — medical malpractice, 27-2-205.

"Health care provider" defined, 27-6-103.

27-6-703. Records of proceedings — confidentiality. The director shall maintain records of all proceedings before the panel, which must include the nature of the act or omissions complained of, a brief summary of the evidence expressed, the decision of the panel, and any majority or dissenting opinions filed. Any records which may identify any party to the proceedings may not be made public and are not subject to subpoena but are to be used solely for the purpose of compiling statistical data and facilitating ongoing studies of medical malpractice in Montana.

History: En. 17-1315 by Sec. 15, Ch. 449, L. 1977; R.C.M. 1947, 17-1315.

Cross-References
Right to know, Art. II, sec. 9, Mont. Const.
Right of privacy, Art. II, sec. 10, Mont. Const.

27-6-704. Panel proceedings and decision privileged from disclosure in court actions. (1) No panel member may be called to testify in any proceeding concerning the deliberations, discussions, decisions, and internal proceedings of the panel.

(2) The decision of the medical review panel is not admissible as evidence in any action subsequently brought in any court of law.

History: En. 17-1311, 17-1312 by Secs. 11, 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1311(6), (7), 17-1312(part); amd. Sec. 30, Ch. 12, L. 1979; amd. Sec. 8, Ch. 376, L. 1983.

CHAPTER 7

SUBMISSION OF CONTROVERSY WITHOUT ACTION

Part 1 — General Provisions

27-7-101. When and in what court controversy may be submitted.
27-7-102. Action by court.
27-7-103. Entry of judgment — costs.
27-7-104. Enforcement of judgment — appeal.

Part 1

General Provisions

Part Cross-References
Trial upon agreed statement of facts, 25-7-602.
Judgment on pleading, Rule 12, M.R.Civ.P. (see Title 25, ch. 20).
Summary judgment, Rule 56, M.R.Civ.P. (see Title 25, ch. 20).

27-7-101. When and in what court controversy may be submitted. Parties to a question in difference which might be subject to a civil action may, without action, agree upon a case containing the facts upon which the controversy depends and present a submission of the same to any court which would have jurisdiction if an action had been brought, but it must appear by affidavit that the controversy is real and the proceedings in good faith to determine the rights of the parties.

History: En. Sec. 299, p. 106, Bannack Stat.; re-en. Sec. 355, p. 207, L. 1867; re-en. Sec. 429, p. 121, Cod. Stat. 1871; re-en. Sec. 455, p. 162, L. 1877; re-en. Sec. 455, 1st Div. Rev. Stat. 1879; re-en. Sec. 468, 1st Div. Comp. Stat. 1887; re-en. Sec. 2050, C. Civ. Proc. 1895; re-en. Sec. 7254, Rev. C. 1907; re-en. Sec. 9872, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1138; re-en. Sec. 9872, R.C.M. 1935; R.C.M. 1947, 93-9501(part).

27-7-102. Action by court. The court must thereupon hear and determine the case and render judgment thereon as if an action were depending.

History: En. Sec. 299, p. 106, Bannack Stat.; re-en. Sec. 355, p. 207, L. 1867; re-en. Sec. 429, p. 121, Cod. Stat. 1871; re-en. Sec. 455, p. 162, L. 1877; re-en. Sec. 455, 1st Div. Rev. Stat. 1879; re-en. Sec. 468, 1st Div. Comp. Stat. 1887; re-en. Sec. 2050, C. Civ. Proc. 1895; re-en. Sec. 7254,

Rev. c. 1907; re-en. Sec. 9872, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1138; re-en. Sec. 9872, R.C.M. 1935; R.C.M. 1947, 93-9501(part).

Cross-References

Trial upon agreed statement of facts, 25-7-602.

Judgment, Title 25, ch. 9.

Findings by the court, Rule 52, M.R.Civ.P. (see Title 25, ch. 20).

Judgments — costs, Rule 54, M.R.Civ.P. (see Title 25, ch. 20).

Entry of judgment, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

27-7-103. Entry of judgment — costs. Judgment must be entered in the judgment book as in other cases but without costs for any proceeding prior to the trial.

History: En. Sec. 300, p. 106, Bannack Stat.; re-en. Sec. 356, p. 207, L. 1867; re-en. Sec. 430, p. 121, Cod. Stat. 1871; re-en. Sec. 456, p. 163, L. 1877; re-en. Sec. 456, 1st Div. Rev. Stat. 1879; re-en. Sec. 469, 1st Div. Comp. Stat. 1887; re-en. Sec. 2051, C. Civ. Proc. 1895; re-en. Sec. 7255, Rev. C. 1907; re-en. Sec. 9873, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1139; re-en. Sec. 9873, R.C.M. 1935; R.C.M. 1947, 93-9502; amd. Sec. 31, Ch. 12, L. 1979.

27-7-104. Enforcement of judgment — appeal. The judgment may be enforced in the same manner as if it had been rendered in an action and is in the same manner subject to appeal.

History: En. Sec. 301, p. 106, Bannack Stat.; re-en. Sec. 357, p. 207, L. 1867; re-en. Sec. 431, p. 121, Cod. Stat. 1871; re-en. Sec. 457, p. 163, L. 1877; re-en. Sec. 457, 1st Div. Rev. Stat. 1879; re-en. Sec. 470, 1st Div. Comp. Stat. 1887; re-en. Sec. 2052, C. Civ. Proc. 1895; re-en. Sec. 7256, Rev. C. 1907; re-en. Sec. 9874, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1140; re-en. Sec. 9874, R.C.M. 1935; R.C.M. 1947, 93-9503.

Cross-References

Trial upon agreed statement of facts, 25-7-602.

CHAPTER 8

UNIFORM DECLARATORY JUDGMENTS ACT

Part 1 — General Provisions

27-8-101. Short title.
27-8-102. Purpose — liberal construction.
27-8-103. Uniformity of interpretation.
27-8-104. Definition of person.

Part 2 — Availability of Declaratory Judgments

27-8-201. Scope of power to render declaratory judgments.
27-8-202. Who may obtain declaratory judgment.
27-8-203. When contract may be construed.
27-8-204. Declarations concerning administration of trusts and estates.
27-8-205. Enumeration not restrictive of general powers.
27-8-206. Court's discretion to refuse to render judgment.

Part 3 — Procedure

27-8-301. Necessary parties.
27-8-302. Jury trial.
27-8-303 through 27-8-310 reserved.
27-8-311. Costs.
27-8-312. Review of orders and judgments.
27-8-313. Supplemental relief.

Part 1

General Provisions

27-8-101. Short title. This chapter may be cited as the "Uniform Declaratory Judgments Act".

History: En. Sec. 16, Ch. 16, L. 1935; re-en. Sec. 9835.16, R.C.M. 1935; R.C.M. 1947, 93-8916.

27-8-102. Purpose — liberal construction. This chapter is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be liberally construed and administered.

History: En. Sec. 12, Ch. 16, L. 1935; re-en. Sec. 9835.12, R.C.M. 1935; R.C.M. 1947, 93-8912.

27-8-103. Uniformity of interpretation. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.

History: En. Sec. 15, Ch. 16, L. 1935; re-en. Sec. 9835.15, R.C.M. 1935; R.C.M. 1947, 93-8915.

27-8-104. Definition of person. The word "person", wherever used in this chapter, shall be construed to mean any person, partnership, joint-stock company, unincorporated association, or society or municipal or other corporation of any character whatsoever.

History: En. Sec. 13, Ch. 16, L. 1935; re-en. Sec. 9835.13, R.C.M. 1935; R.C.M. 1947, 93-8913.

Part 2

Availability of Declaratory Judgments

27-8-201. Scope of power to render declaratory judgments. Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.

History: En. Sec. 1, Ch. 16, L. 1935; re-en. Sec. 9835.1, R.C.M. 1935; R.C.M. 1947, 93-8901.

27-8-202. Who may obtain declaratory judgment. Any person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

History: En. Sec. 2, Ch. 16, L. 1935; re-en. Sec. 9835.2, R.C.M. 1935; R.C.M. 1947, 93-8902.

27-8-203. When contract may be construed. A contract may be construed either before or after there has been a breach thereof.

History: En. Sec. 3, Ch. 16, L. 1935; re-en. Sec. 9835.3, R.C.M. 1935; R.C.M. 1947, 93-8903.

27-8-204. Declarations concerning administration of trusts and estates. Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, heir, or cestui que trust in the administration of a trust or of the estate of a decedent, minor, seriously mentally ill person, or insolvent may have a declaration of rights or legal relations in respect thereto:

(1) to ascertain any class of creditors, devisees, heirs, or others;

(2) to direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(3) to determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

History: En. Sec. 4, Ch. 16, L. 1935; re-en. Sec. 9835.4, R.C.M. 1935; R.C.M. 1947, 93-8904; amd. Sec. 32, Ch. 12, L. 1979.

27-8-205. Enumeration not restrictive of general powers. The enumeration in 27-8-202 through 27-8-204 does not limit or restrict the exercise of the general powers conferred in 27-8-201 in any proceeding where declaratory relief is sought in which a judgment or decree will terminate the controversy or remove an uncertainty.

History: En. Sec. 5, Ch. 16, L. 1935; re-en. Sec. 9835.5, R.C.M. 1935; R.C.M. 1947, 93-8905.

27-8-206. Court's discretion to refuse to render judgment. The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

History: En. Sec. 6, Ch. 16, L. 1935; re-en. Sec. 9835.6, R.C.M. 1935; R.C.M. 1947, 93-8906.

Part 3

Procedure

27-8-301. Necessary parties. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party and shall be entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled to be heard.

History: En. Sec. 11, Ch. 16, L. 1935; re-en. Sec. 9835.11, R.C.M. 1935; R.C.M. 1947, 93-8911.

27-8-302. Jury trial. When a proceeding under this chapter involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.

History: En. Sec. 9, Ch. 16, L. 1935; re-en. Sec. 9835.9, R.C.M. 1935; R.C.M. 1947, 93-8909.

27-8-303 through 27-8-310 reserved.

27-8-311. Costs. In any proceeding under this chapter the court may make such award of costs as may seem equitable and just.

History: En. Sec. 10, Ch. 16, L. 1935; re-en. Sec. 9835.10, R.C.M. 1935; R.C.M. 1947, 93-8910.

27-8-312. Review of orders and judgments. All orders, judgments, and decrees under this chapter may be reviewed as other orders, judgments, and decrees.

History: En. Sec. 7, Ch. 16, L. 1935; re-en. Sec. 9835.7, R.C.M. 1935; R.C.M. 1947, 93-8907.

27-8-313. Supplemental relief. Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by a declaratory judgment or decree to show cause why further relief should not be granted forthwith.

History: En. Sec. 8, Ch. 16, L. 1935; re-en. Sec. 9835.8, R.C.M. 1935; R.C.M. 1947, 93-8908.

CHAPTER 9

CONFESSION OF JUDGMENT

Part 1 — General Provisions

27-9-101. When and in what courts judgment may be confessed.
27-9-102. Requirement of signed, verified statement by defendant.
27-9-103. Filing and costs — district court.
27-9-104. Filing and costs — justice's court.

Part 1

General Provisions

27-9-101. When and in what courts judgment may be confessed. Subject to 28-2-709, a judgment by confession may be entered without action, either for money due or to become due or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter. Such judgment may be entered in any court having jurisdiction for like amounts. Judgment upon confession may be entered up in any justice's court specified in the confession, as provided in this chapter.

History: Ap. p. Sec. 297, p. 105, Bannack Stat.; re-en. Sec. 352, p. 206, L. 1867; re-en. Sec. 426, p. 120, Cod. Stat. 1871; amd. Sec. 452, p. 162, L. 1877; re-en. Sec. 452, 1st Div. Rev. Stat. 1879; re-en. Sec. 465, 1st Div. Comp. Stat. 1887; re-en. Sec. 2040, C. Civ. Proc. 1895; re-en. Sec. 7250, Rev. C. 1907; re-en. Sec. 9868, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1132; re-en. Sec. 9868, R.C.M. 1935; Sec. 93-9401, R.C.M. 1947; Ap. p. Sec. 1620, C. Civ. Proc. 1895; re-en. Sec. 7046, Rev. C. 1907; re-en. Sec. 9679, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 889; re-en. Sec. 9679, R.C.M. 1935; Sec. 93-7301, R.C.M. 1935; R.C.M. 1947, 93-7301, 93-9401; amd. Sec. 33, Ch. 12, L. 1979.

Cross-References

Agreements for confession of judgments void, 28-2-709.

27-9-102. Requirement of signed, verified statement by defendant. A statement in writing must be made, signed by the defendant, and verified by his oath to the following effect:

(1) It must authorize the entry of judgment for a specified sum.

(2) If it be for money due or to become due, it must state concisely the facts out of which it arose and show that the sum confessed therefor is justly due or to become due.

(3) If it be for the purpose of securing the plaintiff against contingent liability, it must state concisely the facts constituting the liability and show that the sum confessed therefor does not exceed the same.

History: En. Sec. 298, p. 105, Bannack Stat.; amd. Sec. 353, p. 206, L. 1867; re-en. Sec. 427, p. 120, Cod. Stat. 1871; re-en. Sec. 453, p. 162, L. 1877; re-en. Sec. 453, 1st Div. Rev. Stat. 1879; re-en. Sec. 466, 1st Div. Comp. Stat. 1887; re-en. Sec. 2041, C. Civ. Proc. 1895; re-en. Sec. 7251, Rev. C. 1907; re-en. Sec. 9869, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1133; re-en. Sec. 9869, R.C.M. 1935; R.C.M. 1947, 93-9402.

27-9-103. Filing and costs — district court. The statement must be filed with the clerk of the court in which the judgment is to be entered, who shall endorse upon it and enter in the judgment book a judgment of such court for the amount confessed, with $10 costs.

History: En. Sec. 354, p. 206, L. 1867; re-en. Sec. 428, p. 120, Cod. Stat. 1871; re-en. Sec. 454, p. 162, L. 1877; re-en. Sec. 454, 1st Div. Rev. Stat. 1879; re-en. Sec. 467, 1st Div. Comp. Stat. 1887; amd. Sec. 2042, C. Civ. Proc. 1895; re-en. Sec. 7252, Rev. C. 1907; re-en. Sec. 9870, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1134; re-en. Sec. 9870, R.C.M. 1935; R.C.M. 1947, 93-9403; amd. Sec. 34, Ch. 12, L. 1979.

27-9-104. Filing and costs — justice's court. In a justice's court which has authority to enter the judgment, the statement may be filed with the justice, who shall thereupon enter in his docket a judgment of his court for the amount confessed, with costs. If a transcript of such judgment is filed with the clerk of the district court, a copy of the statement must be filed with it.

History: En. Sec. 2043, C. Civ. Proc. 1895; re-en. Sec. 7253, Rev. C. 1907; re-en. Sec. 9871, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1135; re-en. Sec. 9871, R.C.M. 1935; R.C.M. 1947, 93-9404; amd. Sec. 35, Ch. 12, L. 1979.

CHAPTERS 10 THROUGH 14

RESERVED

CHAPTER 15

PROVISIONAL REMEDIES

Part 1 — General Provisions

27-15-101. When plaintiff may be required to elect among arrest, injunction, and attachment.
27-15-102. Availability of provisional remedies to defendant interposing counterclaim.
27-15-103. Time limit on decisions regarding arrest, injunction, or attachment.

Part 1

General Provisions

27-15-101. When plaintiff may be required to elect among arrest, injunction, and attachment. Where an application for an order of arrest, injunction order, and writ of attachment or two of them is made in the same action against the same defendant and it satisfactorily appears that, under the particular circumstances of the case, two or all of them are not necessary for the plaintiff's security, the court or judge may, in its or his discretion, require the plaintiff to elect between them.

History: En. Sec. 980, C. Civ. Proc. 1895; re-en. Sec. 6708, Rev. C. 1907; re-en. Sec. 9311, R.C.M. 1921; re-en. Sec. 9311, R.C.M. 1935; R.C.M. 1947, 93-4601(part).

27-15-102. Availability of provisional remedies to defendant interposing counterclaim. Whenever the defendant interposes a counterclaim and thereupon demands an affirmative judgment against the plaintiff, his right to a provisional remedy is the same as it would be in an action brought by him against the plaintiff for the cause of action stated in the counterclaim and demanding the same judgment. For the purpose of applying to such a case the provisions of chapters 15 through 20 of this title and chapter 8 of Title 25, the defendant is considered the plaintiff, the plaintiff is considered the defendant, and the counterclaim so set forth in the answer is considered the complaint.

History: En. Sec. 981, C. Civ. Proc. 1895; re-en. Sec. 6709, Rev. C. 1907; re-en. Sec. 9312, R.C.M. 1921; re-en. Sec. 9312, R.C.M. 1935; R.C.M. 1947, 93-4602; amd. Sec. 36, Ch. 12, L. 1979.

27-15-103. Time limit on decisions regarding arrest, injunction, or attachment. Where an application is made to obtain, vacate, modify, or set aside an order of arrest, injunction order, or writ of attachment, the court or judge must finally decide the same within 20 days after it is submitted for decision.

History: En. Sec. 980, C. Civ. Proc. 1895; re-en. Sec. 6708, Rev. C. 1907; re-en. Sec. 9311, R.C.M. 1921; re-en. Sec. 9311, R.C.M. 1935; R.C.M. 1947, 93-4601(part).

CHAPTER 16

ARREST AND BAIL IN CIVIL ACTIONS

Part 1 — General Provisions

27-16-101. Exclusive procedure for prejudgment arrest in civil action.
27-16-102. When defendant may be arrested.

Part 2 — Order for Arrest—Execution

27-16-201. Order from judge required.
27-16-202. Time for making order.
27-16-203. When order must be made.
27-16-204. Plaintiff's undertaking.
27-16-205. Affidavits of sureties — filing of undertaking.
27-16-206. Directions to sheriff in order.

27-16-207. Service of order and affidavit.
27-16-208. Execution of order — prepayment of expense by plaintiff.
27-16-209. Liability of sheriff for escape or rescue.
27-16-210. Recovery on sheriff's official bond.

Part 3 — Vacation of Order—Reduction of Bail

27-16-301. Proceedings to vacate order or reduce bail.
27-16-302. When order vacated or bail reduced.

Part 4 — Giving Bail

27-16-401. Discharge of defendant upon giving bail before execution.
27-16-402. Form of undertaking for bail.
27-16-403. Qualifications of sureties.
27-16-404. Filing of order with return and undertaking — plaintiff's notice of nonacceptance.
27-16-405. Notice of justification of sureties — new undertaking.
27-16-406. Procedure for justification.
27-16-407. Acceptance of sufficiency of sureties by judge or clerk.

Part 5 — Liability and Exoneration of Sureties

27-16-501. Surrender of defendant.
27-16-502. Manner and time of surrender.
27-16-503. Exoneration of sureties.
27-16-504. Action to enforce sureties' liability.
27-16-505. Other circumstances in which sureties exonerated.

Part 6 — Deposit of Money in Lieu of Bail

27-16-601. Deposit of money by defendant with sheriff.
27-16-602. Sheriff to pay money into court — certificates of payment.
27-16-603. Substituting bail for deposit.
27-16-604. Disposition of deposited money after judgment.

Parts 7 through 9 reserved

Part 10 — Arrest in Civil Actions in Justice's Court

27-16-1001. Justice's authority to order arrest.
27-16-1002. Plaintiff's affidavit and undertaking.
27-16-1003. Defendant to be taken before justice immediately.
27-16-1004. Notice to plaintiff of arrest — officer's certificate.
27-16-1005. Officer to detain defendant — expenses.
27-16-1006. Defense against order of arrest.

Chapter Cross-References

Bail — criminal, Title 46, ch. 9.

Part 1

General Provisions

27-16-101. Exclusive procedure for prejudgment arrest in civil action. No person may be arrested before judgment in a civil action except as prescribed by this chapter.

History: En. Sec. 72, p. 148, L. 1867; re-en. Sec. 80, p. 44, Cod. Stat. 1871; re-en. Sec. 118, p. 68, L. 1877; re-en. Sec. 118, 1st Div. Rev. Stat. 1879; re-en. Sec. 120, 1st Div. Comp. Stat.

1887; re-en. Sec. 800, C. Civ. Proc. 1895; re-en. Sec. 6595, Rev. C. 1907; re-en. Sec. 9193, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 478; re-en. Sec. 9193, R.C.M. 1935; R.C.M. 1947, 93-4001; amd. Sec. 37, Ch. 12, L. 1979.

27-16-102. When defendant may be arrested. The defendant may be arrested in the following cases:

(1) in an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the state with intent to defraud his creditors;

(2) in an action for willful injury to person or character or to property which the defendant knew belonged to another;

(3) in an action for a fine or penalty or for money or property fraudulently misapplied or converted to his own use by a public officer, an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity; for misconduct or neglect in office or in a professional employment; or for a willful violation of duty;

(4) in an action to recover possession of personal property unjustly obtained, when the property or any part thereof has been concealed, removed, or disposed of so that it cannot be found or taken by the sheriff;

(5) when the defendant has been guilty of fraud in contracting the debt or incurring the obligation for which the action is brought or in concealing or disposing of the property for the taking, detention, or conversion of which the action is brought;

(6) when the defendant has removed or disposed of his property or is about to do so with intent to defraud his creditors.

History: En. Sec. 73, p. 148, L. 1867; re-en. Sec. 81, p. 44, Cod. Stat. 1871; re-en. Sec. 119, p. 68, L. 1877; re-en. Sec. 119, 1st Div. Rev. Stat. 1879; re-en. Sec. 121, 1st Div. Comp. Stat. 1887; re-en. Sec. 801, C. Civ. Proc. 1895; re-en. Sec. 6596, Rev. C. 1907; re-en. Sec. 9194, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 479; re-en. Sec. 9194, R.C.M. 1935; amd. Sec. 69, Ch. 359, L. 1977; R.C.M. 1947, 93-4002; amd. Sec. 38, Ch. 12, L. 1979.

Cross-References

Standards of conduct for public officials, Title 2, ch. 2.

Libel and slander, Title 27, ch. 1, part 8.

Contracts — interpretation, Title 28, ch. 2 and 3.

Actual and constructive fraud, 28-2-404 through 28-2-406.

Fraudulent conveyances, Title 31, ch. 2, part 3.

Fellow employee — liability for malicious act or omission, 39-71-413.

Obligations of trustee, Title 72, ch. 20, part 2.

Part 2

Order for Arrest — Execution

Part Cross-References

Seizure of person or property, Rule 64, M.R.Civ.P. (see Title 25, ch. 20).

27-16-201. Order from judge required. An order for the arrest of the defendant must be obtained from the judge of the court in which the action is brought.

History: En. Sec. 74, p. 148, L. 1867; re-en. Sec. 82, p. 44, Cod. Stat. 1871; re-en. Sec. 120, p. 68, L. 1877; re-en. Sec. 120, 1st Div. Rev. Stat. 1879; re-en. Sec. 122, 1st Div. Comp. Stat. 1887; re-en. Sec. 802, C. Civ. Proc. 1895; re-en. Sec. 6597, Rev. C. 1907; re-en. Sec. 9195, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 480; re-en. Sec. 9195, R.C.M. 1935; R.C.M. 1947, 93-4003.

27-16-202. Time for making order. The order may be made at the time of issuing the summons or at any time afterwards before judgment.

History: En. Sec. 77, p. 148, L. 1867; re-en. Sec. 85, p. 44, Cod. Stat. 1871; re-en. Sec. 123, p. 69, L. 1877; re-en. Sec. 123, 1st Div. Rev. Stat. 1879; re-en. Sec. 125, 1st Div. Comp. Stat. 1887; re-en. Sec. 805, C. Civ. Proc. 1895; re-en. Sec. 6600, Rev. C. 1907; re-en. Sec. 9198, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 483; re-en. Sec. 9198, R.C.M. 1935; R.C.M. 1947, 93-4006(part).

27-16-203. When order must be made. The order must be made whenever it shall appear to the judge, by the affidavit of the plaintiff or some other person, that a sufficient cause of action exists and that the case is one of those mentioned in 27-16-102.

History: En. Secs. 75, 76, p. 148, L. 1867; re-en. Sec. 83, p. 44, Cod. Stat. 1871; re-en. Sec. 121, p. 69, L. 1877; re-en. Sec. 121, 1st Div. Rev. Stat. 1879; re-en. Sec. 123, 1st Div. Comp. Stat. 1887; amd. Sec. 803, C. Civ. Proc. 1895; re-en. Sec. 6598, Rev. C. 1907; re-en. Sec. 9196, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 481, 482; re-en. Sec. 9196, R.C.M. 1935; R.C.M. 1947, 93-4004(part).

27-16-204. Plaintiff's undertaking. Before making the order, the judge must require a written undertaking on the part of the plaintiff, with at least two sufficient sureties, to the effect that, if the defendant recover judgment or if the court shall finally decide that the plaintiff was not entitled to an order of arrest, the plaintiff will pay all costs and charges that may be awarded to the defendant and all damages which he may sustain by reason of the arrest, if the same be wrongful or without sufficient cause, not exceeding the sum specified in the undertaking, which shall be at least $500.

History: En. Secs. 75, 76, p. 148, L. 1867; re-en. Sec. 83, p. 44, Cod. Stat. 1871; re-en. Sec. 121, p. 69, L. 1877; re-en. Sec. 121, 1st Div. Rev. Stat. 1879; re-en. Sec. 123, 1st Div. Comp. Stat. 1887; amd. Sec. 803, C. Civ. Proc. 1895; re-en. Sec. 6598, Rev. C. 1907; re-en. Sec. 9196, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 481, 482; re-en. Sec. 9196, R.C.M. 1935; R.C.M. 1947, 93-4004(part).

Cross-References

Suretyship, Title 28, ch. 11, part 4.

27-16-205. Affidavits of sureties — filing of undertaking. Each of the sureties must annex to the undertaking an affidavit that he is a resident and householder or freeholder within the state and worth double the sum specified in the undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution. The undertaking must be filed with the clerk of the court.

History: En. Sec. 76, p. 148, L. 1867; re-en. Sec. 84, p. 44, Cod. Stat. 1871; re-en. Sec. 122, p. 69, L. 1877; re-en. Sec. 122, 1st Div. Rev. Stat. 1879; re-en. Sec. 124, 1st Div. Comp. Stat. 1887; re-en. Sec. 804, C. Civ. Proc. 1895; re-en. Sec. 6599, Rev. C. 1907; re-en. Sec. 9197, R.C.M. 1921; re-en. Sec. 9197, R.C.M. 1935; R.C.M. 1947, 93-4005.

27-16-206. Directions to sheriff in order. The order must require the sheriff of the county where the defendant may be found forthwith to arrest him and hold him to bail in a specified sum and to return the order at a time therein mentioned to the clerk of the court in which the action is pending.

History: En. Sec. 77, p. 148, L. 1867; re-en. Sec. 85, p. 44, Cod. Stat. 1871; re-en. Sec. 123, p. 69, L. 1877; re-en. Sec. 123, 1st Div. Rev. Stat. 1879; re-en. Sec. 125, 1st Div. Comp. Stat. 1887; re-en. Sec. 805, C. Civ. Proc. 1895; re-en. Sec. 6600, Rev. C. 1907; re-en. Sec. 9198, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 483; re-en. Sec. 9198, R.C.M. 1935; R.C.M. 1947, 93-4006(part).

27-16-207. Service of order and affidavit. The order of arrest, with a copy of the affidavit upon which it is made, must be delivered to the sheriff, who, upon arresting the defendant, shall deliver him a copy of the affidavit and also, if defendant desires, a copy of the order of arrest.

History: En. Sec. 78, p. 149, L. 1867; re-en. Sec. 86, p. 45, Cod. Stat. 1871; re-en. Sec. 124, p. 69, L. 1877; re-en. Sec. 124, 1st Div. Rev. Stat. 1879; re-en. Sec. 126, 1st Div. Comp. Stat. 1887; re-en. Sec. 806, C. Civ. Proc. 1895; re-en. Sec. 6601, Rev. C. 1907; re-en. Sec. 9199, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 484; re-en. Sec. 9199, R.C.M. 1935; R.C.M. 1947, 93-4007.

27-16-208. Execution of order — prepayment of expense by plaintiff. The sheriff must execute the order by arresting the defendant and keeping him in custody until discharged by law. But the sheriff is not bound to keep such person under arrest more than 24 hours unless the plaintiff advance each day the expense of keeping such person, which expense shall be taxed as costs in the action and in no case shall be a charge against the county.

History: En. Sec. 79, p. 149, L. 1867; en. Sec. 87, p. 45, Cod. Stat. 1871; re-en. Sec. 125, p. 69, L. 1877; re-en. Sec. 125, 1st Div. Rev. Stat. 1879; re-en. Sec. 127, 1st Div. Comp. Stat. 1887; re-en. Sec. 807, C. Civ. Proc. 1895; re-en. Sec. 6602, Rev. C. 1907; re-en. Sec. 9200, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 485; re-en. Sec. 9200, R.C.M. 1935; R.C.M. 1947, 93-4008.

27-16-209. Liability of sheriff for escape or rescue. If after being arrested the defendant escape or be rescued, the sheriff is liable as bail, but he may discharge himself from such liability by the giving and justification of bail at any time before judgment.

History: En. Sec. 95, p. 151, L. 1867; re-en. Sec. 103, p. 48, Cod. Stat. 1871; re-en. Sec. 141, p. 73, L. 1877; re-en. Sec. 141, 1st Div. Rev. Stat. 1879; re-en. Sec. 143, 1st Div. Comp. Stat. 1887; re-en. Sec. 823, C. Civ. Proc. 1895; re-en. Sec. 6618, Rev. C. 1907; re-en. Sec. 9216, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 501; re-en. Sec. 9216, R.C.M. 1935; R.C.M. 1947, 93-4024.

Cross-References

Liability for escape in civil actions, 7-32-2132.

27-16-210. Recovery on sheriff's official bond. If a judgment be recovered against the sheriff upon his liability as bail and an execution thereon be returned unsatisfied in whole or in part, the same proceeding may be had on his official bond for the recovery of the whole or any deficiency as in other cases of delinquency.

History: En. Sec. 96, p. 151, L. 1867; re-en. Sec. 104, p. 48, Cod. Stat. 1871; re-en. Sec. 142, p. 73, L. 1877; re-en. Sec. 142, 1st Div. Rev. Stat. 1879; re-en. Sec. 144, 1st Div. Comp. Stat. 1887; re-en. Sec. 824, C. Civ. Proc. 1895; re-en. Sec. 6619, Rev. C. 1907; re-en. Sec. 9217, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 502; re-en. Sec. 9217, R.C.M. 1935; R.C.M. 1947, 93-4025.

Part 3

Vacation of Order — Reduction of Bail

27-16-301. Proceedings to vacate order or reduce bail. A defendant arrested may, at any time before justification of bail, apply to the judge who made the order or the court in which the action is pending, upon reasonable notice to the plaintiff, to vacate the order of arrest or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs in addition to those on which the order of arrest was made.

History: En. Sec. 97, p. 151, L. 1867; re-en. Sec. 105, p. 48, Cod. Stat. 1871; re-en. Sec. 143, p. 73, L. 1877; re-en. Sec. 143, 1st Div. Rev. Stat. 1879; re-en. Sec. 145, 1st Div. Comp. Stat.

1887; re-en. Sec. 825, C. Civ. Proc. 1895; re-en. Sec. 6620, Rev. C. 1907; re-en. Sec. 9218, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 503; re-en. Sec. 9218, R.C.M. 1935; R.C.M. 1947, 93-4026.

27-16-302. When order vacated or bail reduced. If, upon such application, it satisfactorily appears that there was not sufficient cause for the arrest, the order shall be vacated; or if it satisfactorily appears that the bail was fixed too high, the amount shall be reduced.

History: En. Sec. 98, p. 151, L. 1867; re-en. Sec. 106, p. 48, Cod. Stat. 1871; re-en. Sec. 144, p. 73, L. 1877; re-en. Sec. 144, 1st Div. Rev. Stat. 1879; re-en. Sec. 146, 1st Div. Comp. Stat. 1887; re-en. Sec. 826, C. Civ. Proc. 1895; re-en. Sec. 6621, Rev. C. 1907; re-en. Sec. 9219, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 504; re-en. Sec. 9219, R.C.M. 1935; R.C.M. 1947, 93-4027.

Part 4

Giving Bail

27-16-401. Discharge of defendant upon giving bail before execution. The defendant, at any time before execution, is discharged from arrest either upon giving bail or upon depositing the amount mentioned in the order, as provided in this chapter.

History: En. Sec. 80, p. 149, L. 1867; re-en. Sec. 88, p. 45, Cod. Stat. 1871; re-en. Sec. 126, p. 70, L. 1877; re-en. Sec. 126, 1st Div. Rev. Stat. 1879; re-en. Sec. 128, 1st Div. Comp. Stat. 1887; re-en. Sec. 808, C. Civ. Proc. 1895; re-en. Sec. 6603, Rev. C. 1907; re-en. Sec. 9201, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 486; re-en. Sec. 9201, R.C.M. 1935; R.C.M. 1947, 93-4009.

27-16-402. Form of undertaking for bail. The defendant may give bail by causing a written undertaking to be executed by two or more sufficient sureties, stating their places of residence and occupations, to the effect that they are bound in the amount mentioned in the order of arrest, that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action and to such as may be issued to enforce the judgment therein or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

History: En. Sec. 81, p. 149, L. 1867; re-en. Sec. 89, p. 45, Cod. Stat. 1871; re-en. Sec. 127, p. 70, L. 1877; re-en. Sec. 127, 1st Div. Rev. Stat. 1879; re-en. Sec. 129, 1st Div. Comp. Stat. 1887; re-en. Sec. 809, C. Civ. Proc. 1895; re-en. Sec. 6604, Rev. C. 1907; re-en. Sec. 9202, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 487; re-en. Sec. 9202, R.C.M. 1935; R.C.M. 1947, 93-4010.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

27-16-403. Qualifications of sureties. The qualifications of bail shall be as follows:

(1) Each of them must be a resident and householder or freeholder within the county.

(2) Each must be worth the amount specified in the order of arrest or the amount to which the order is reduced, as provided in this chapter, over and above all his debts and liabilities, exclusive of property exempt from execution; but the judge or clerk, on justification, may allow more than two sureties to justify severally, in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

History: En. Sec. 88, p. 150, L. 1867; re-en. Sec. 96, p. 46, Cod. Stat. 1871; re-en. Sec. 134, p. 71, L. 1877; re-en. Sec. 134, 1st Div. Rev. Stat. 1879; re-en. Sec. 136, 1st Div. Comp. Stat. 1887; re-en. Sec. 816, C. Civ. Proc. 1895; re-en. Sec. 6611, Rev. C. 1907; re-en. Sec. 9209, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 494; re-en. Sec. 9209, R.C.M. 1935; R.C.M. 1947, 93-4017.

27-16-404. Filing of order with return and undertaking — plaintiff's notice of nonacceptance. (1) Within the time limited for that purpose, the sheriff must file the order of arrest in the office of the clerk of the court in which the action is pending, with his return endorsed thereon, together with a copy of the undertaking of the bail. The original undertaking he must retain in his possession until filed, as herein provided.

(2) The plaintiff, within 10 days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he shall be deemed to have accepted them and the sheriff shall be exonerated from liability. If no notice be served within 10 days, the original undertaking must be filed with the clerk of the court.

History: **En. Sec. 86, p. 150, L. 1867; re-en. Sec. 94, p. 46, Cod. Stat. 1871; re-en. Sec. 132, p. 71, L. 1877; re-en. Sec. 132, 1st Div. Rev. Stat. 1879; re-en. Sec. 134, 1st Div. Comp. Stat. 1887; re-en. Sec. 814, C. Civ. Proc. 1895; re-en. Sec. 6609, Rev. C. 1907; re-en. Sec. 9207, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 492; re-en. Sec. 9207, R.C.M. 1935; R.C.M. 1947, 93-4015.**

27-16-405. Notice of justification of sureties — new undertaking. Within 5 days after receipt of notice, the sheriff or defendant may give to the plaintiff or his attorney notice of the justification of the same or other bail (specifying the place of residence and occupation of the latter) before a judge of the court or clerk thereof, at a specified time and place, the time not to be less than 5 or more than 10 days thereafter, except by consent of parties. In case other bail is given, there shall be a new undertaking.

History: **En. Sec. 87, p. 150, L. 1867; re-en. Sec. 95, p. 46, Cod. Stat. 1871; re-en. Sec. 133, p. 71, L. 1877; re-en. Sec. 133, 1st Div. Rev. Stat. 1879; re-en. Sec. 135, 1st Div. Comp. Stat. 1887; re-en. Sec. 815, C. Civ. Proc. 1895; re-en. Sec. 6610, Rev. C. 1907; re-en. Sec. 9208, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 493; re-en. Sec. 9208, R.C.M. 1935; R.C.M. 1947, 93-4016.**

27-16-406. Procedure for justification. For the purpose of justification, each of the bail must attend before the judge or clerk at the time and place mentioned in the notice and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the judge or clerk, in his discretion, may think proper. The examination shall be reduced to writing and subscribed by the bail if required by the plaintiff.

History: **En. Sec. 89, p. 150, L. 1867; re-en. Sec. 97, p. 47, Cod. Stat. 1871; re-en. Sec. 135, p. 72, L. 1877; re-en. Sec. 135, 1st Div. Rev. Stat. 1879; re-en. Sec. 137, 1st Div. Comp. Stat. 1887; re-en. Sec. 817, C. Civ. Proc. 1895; re-en. Sec. 6612, Rev. C. 1907; re-en. Sec. 9210, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 495; re-en. Sec. 9210, R.C.M. 1935; R.C.M. 1947, 93-4018.**

27-16-407. Acceptance of sufficiency of sureties by judge or clerk. If the judge or clerk shall find the bail sufficient, he must annex the examination to the undertaking, endorse his allowance thereon, and cause them to be filed, and the sheriff shall thereupon be exonerated from liability.

History: **En. Sec. 90, p. 150, L. 1867; re-en. Sec. 98, p. 47, Cod. Stat. 1871; re-en. Sec. 136, p. 72, L. 1877; re-en. Sec. 136, 1st Div. Rev. Stat. 1879; re-en. Sec. 138, 1st Div. Comp. Stat. 1887; re-en. Sec. 818, C. Civ. Proc. 1895; re-en. Sec. 6613, Rev. C. 1907; re-en. Sec. 9211, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 496; re-en. Sec. 9211, R.C.M. 1935; R.C.M. 1947, 93-4019.**

Part 5

Liability and Exoneration of Sureties

Part Cross-References

Suretyship, Title 28, ch. 11, part 4.

27-16-501. Surrender of defendant. At any time before judgment or within 10 days thereafter, the bail may surrender the defendant in their exoneration or he may surrender himself to the sheriff of the county where he was arrested.

History: En. Sec. 82, p. 149, L. 1867; re-en. Sec. 90, p. 45, Cod. Stat. 1871; re-en. Sec. 128, p. 70, L. 1877; re-en. Sec. 128, 1st Div. Rev. Stat. 1879; re-en. Sec. 130, 1st Div. Comp. Stat. 1887; re-en. Sec. 810, C. Civ. Proc. 1895; re-en. Sec. 6605, Rev. C. 1907; re-en. Sec. 9203, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 488; re-en. Sec. 9203, R.C.M. 1935; R.C.M. 1947, 93-4011.

27-16-502. Manner and time of surrender. For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may themselves arrest him or, by a written authority endorsed on a certified copy of the undertaking, may empower the sheriff to do so.

History: En. Sec. 83, p. 149, L. 1867; re-en. Sec. 91, p. 45, Cod. Stat. 1871; re-en. Sec. 129, p. 70, L. 1877; re-en. Sec. 129, 1st Div. Rev. Stat. 1879; re-en. Sec. 131, 1st Div. Comp. Stat. 1887; re-en. Sec. 811, C. Civ. Proc. 1895; re-en. Sec. 6606, Rev. C. 1907; re-en. Sec. 9204, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 489; re-en. Sec. 9204, R.C.M. 1935; R.C.M. 1947, 93-4012(part).

27-16-503. Exoneration of sureties. Upon arrest of the defendant by the sheriff or upon his delivery to the sheriff by the bail or upon his own surrender, the bail shall be exonerated, provided such arrest, delivery, or surrender take place before the expiration of 10 days after judgment; but if such arrest, delivery, or surrender be not made within 10 days after the judgment, the bail shall be finally charged on their undertaking and be bound to pay the amount of the judgment within 10 days thereafter.

History: En. Sec. 83, p. 149, L. 1867; re-en. Sec. 91, p. 45, Cod. Stat. 1871; re-en. Sec. 129, p. 70, L. 1877; re-en. Sec. 129, 1st Div. Rev. Stat. 1879; re-en. Sec. 131, 1st Div. Comp. Stat. 1887; re-en. Sec. 811, C. Civ. Proc. 1895; re-en. Sec. 6606, Rev. C. 1907; re-en. Sec. 9204, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 489; re-en. Sec. 9204, R.C.M. 1935; R.C.M. 1947, 93-4012(part).

27-16-504. Action to enforce sureties' liability. If the bail neglect or refuse to pay the judgment within 10 days after they are finally charged, an action may be commenced against such bail for the amount of such original judgment.

History: En. Sec. 84, p. 149, L. 1867; re-en. Sec. 92, p. 45, Cod. Stat. 1871; re-en. Sec. 130, p. 70, L. 1877; re-en. Sec. 130, 1st Div. Rev. Stat. 1879; re-en. Sec. 132, 1st Div. Comp. Stat. 1887; re-en. Sec. 812, C. Civ. Proc. 1895; re-en. Sec. 6607, Rev. C. 1907; re-en. Sec. 9205, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 490; re-en. Sec. 9205, R.C.M. 1935; R.C.M. 1947, 93-4013.

27-16-505. Other circumstances in which sureties exonerated. The bail must also be exonerated by the death of the defendant, his imprisonment in the state penitentiary or prison, or his legal discharge from the obligation to render himself amenable to the process.

History: En. Sec. 85, p. 149, L. 1867; re-en. Sec. 93, p. 46, Cod. Stat. 1871; re-en. Sec. 131, p. 71, L. 1877; re-en. Sec. 131, 1st Div. Rev. Stat. 1879; re-en. Sec. 133, 1st Div. Comp. Stat. 1887; re-en. Sec. 813, C. Civ. Proc. 1895; re-en. Sec. 6608, Rev. C. 1907; re-en. Sec. 9206, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 491; re-en. Sec. 9206, R.C.M. 1935; R.C.M. 1947, 93-4014.

Part 6

Deposit of Money in Lieu of Bail

27-16-601. Deposit of money by defendant with sheriff. The defendant may, at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. In case the amount of bail be reduced, as provided in this chapter, the defendant may deposit such amount instead of giving bail. In either case, the sheriff shall give the defendant a certificate of the deposit made, and the defendant shall be discharged from custody.

History: En. Sec. 91, p. 150, L. 1867; re-en. Sec. 99, p. 47, Cod. Stat. 1871; re-en. Sec. 137, p. 72, L. 1877; re-en. Sec. 137, 1st Div. Rev. Stat. 1879; re-en. Sec. 139, 1st Div. Comp. Stat. 1887; re-en. Sec. 819, C. Civ. Proc. 1895; re-en. Sec. 6614, Rev. C. 1907; re-en. Sec. 9212, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 497; re-en. Sec. 9212, R.C.M. 1935; R.C.M. 1947, 93-4020.

27-16-602. Sheriff to pay money into court — certificates of payment. The sheriff must, immediately after the deposit, pay the same into court and take from the clerk receiving the same two certificates of such payment, one of which he must deliver or transmit to the plaintiff or his attorney and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff to collect the sum deposited as in other cases of delinquency.

History: En. Sec. 92, p. 151, L. 1867; re-en. Sec. 100, p. 47, Cod. Stat. 1871; re-en. Sec. 138, p. 72, L. 1877; re-en. Sec. 138, 1st Div. Rev. Stat. 1879; re-en. Sec. 140, 1st Div. Comp. Stat. 1887; re-en. Sec. 820, C. Civ. Proc. 1895; re-en. Sec. 6615, Rev. C. 1907; re-en. Sec. 9213, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 498; re-en. Sec. 9213, R.C.M. 1935; R.C.M. 1947, 93-4021.

27-16-603. Substituting bail for deposit. If money be deposited, as provided in 27-16-601 and 27-16-602, bail may be given and may justify upon notice at any time before judgment; and on the filing of the undertaking and justification with the clerk, the money deposited shall be refunded by such clerk to the defendant.

History: En. Sec. 93, p. 151, L. 1867; re-en. Sec. 101, p. 47, Cod. Stat. 1871; re-en. Sec. 139, p. 72, L. 1877; re-en. Sec. 139, 1st Div. Rev. Stat. 1879; re-en. Sec. 141, 1st Div. Comp. Stat. 1887; re-en. Sec. 821, C. Civ. Proc. 1895; re-en. Sec. 6616, Rev. C. 1907; re-en. Sec. 9214, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 499; re-en. Sec. 9214, R.C.M 1935; R.C.M. 1947, 93-4022.

27-16-604. Disposition of deposited money after judgment. Where money shall have been deposited, if it remains on deposit at the time of recovery of a judgment in favor of the plaintiff, the clerk must, under direction of the court, apply the same in satisfaction thereof and, after satisfying the judgment, refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk must, under the direction of the court, refund him the whole sum deposited and remaining unapplied.

History: En. Sec. 94, p. 151, L. 1867; re-en. Sec. 102, p. 48, Cod. Stat. 1871; re-en. Sec. 140, p. 73, L. 1877; re-en. Sec. 140, 1st Div. Rev. Stat. 1879; re-en. Sec. 142, 1st Div. Comp. Stat. 1887; re-en. Sec. 822, C. Civ. Proc. 1895; re-en. Sec. 6617, Rev. C. 1907; re-en. Sec. 9215, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 500; re-en. Sec. 9215, R.C.M. 1935; R.C.M. 1947, 93-4023.

Parts 7 through 9 reserved

Part 10

Arrest in Civil Actions in Justice's Court

27-16-1001. Justice's authority to order arrest. An order to arrest the defendant may be endorsed on a summons issued by the justice, and the defendant may be arrested thereon by the sheriff or constable at the time of serving the summons and brought before the justice and there detained until duly discharged, in the cases mentioned in 27-16-102.

History: **En. Sec. 560, p. 153, Bannack Stat.; re-en. Sec. 666, p. 170, Cod. Stat. 1871; re-en. Sec. 726, 1st Div. Rev. Stat. 1879; re-en. Sec. 746, 1st Div. Comp. Stat. 1887; amd. Sec. 1540, C. Civ. Proc. 1895; re-en. Sec. 7019, Rev. C. 1907; re-en. Sec. 9652, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 861; re-en. Sec. 9652, R.C.M. 1935; R.C.M. 1947, 93-6901.**

27-16-1002. Plaintiff's affidavit and undertaking. Before an order of arrest can be made, the party applying must prove to the satisfaction of the justice, by the affidavit of himself or some other person, the facts upon which the application is founded. The plaintiff must also execute and deliver to the justice a written undertaking in the sum of $300, with sufficient sureties, to the effect that the plaintiff will pay all costs that may be adjudged to the defendant and all damages which he may sustain by reason of the arrest, if the same be wrongful or without sufficient cause, not exceeding the sum specified in the undertaking.

History: **En. Sec. 561, p. 154, Bannack Stat.; re-en. Sec. 667, p. 170, Cod. Stat. 1871; re-en. Sec. 727, 1st Div. Rev. Stat. 1879; re-en. Sec. 747, 1st Div. Comp. Stat. 1887; amd. Sec. 1541, C. Civ. Proc. 1895; re-en. Sec. 7020, Rev. C. 1907; re-en. Sec. 9653, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 862; re-en. Sec. 9653, R.C.M. 1935; R.C.M. 1947, 93-6902.**

Cross-References

Suretyship, Title 28, ch. 11, part 4.

27-16-1003. Defendant to be taken before justice immediately. The defendant, immediately upon being arrested, must be taken to the office of the justice who made the order; and if he is absent or unable to try the action or if it appears to him by the affidavit of defendant that he is a material witness in the action, the officer must immediately take the defendant before another justice of the county, if there is another, and if not, then before a justice of an adjoining county, who must take jurisdiction of the action and proceed thereon as if the summons had been issued and the order of arrest made by him.

History: **En. Sec. 562, p. 154, Bannack Stat.; re-en. Sec. 668, p. 171, Cod. Stat. 1871; re-en. Sec. 728, 1st Div. Rev. Stat. 1879; re-en. Sec. 748, 1st Div. Comp. Stat. 1887; amd. Sec. 1542, C. Civ. Proc. 1895; re-en. Sec. 7021, Rev. C. 1907; re-en. Sec. 9654, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 863; re-en. Sec. 9654, R.C.M. 1935; amd. Sec. 18, Ch. 491, L. 1973; R.C.M. 1947, 93-6903.**

27-16-1004. Notice to plaintiff of arrest — officer's certificate. The officer making the arrest must immediately give notice thereof to the plaintiff or his attorney or agent and endorse on the summons and subscribe a certificate, stating the time of serving the same and the time of arrest and of his giving notice to the plaintiff.

History: **En. Sec. 563, p. 154, Bannack Stat.; re-en. Sec. 669, p. 171, Cod. Stat. 1871; re-en. Sec. 729, 1st Div. Rev. Stat. 1879; re-en. Sec. 749, 1st Div. Comp. Stat. 1887; re-en. Sec. 1543, C. Civ. Proc. 1895; re-en. Sec. 7022, Rev. C. 1907; re-en. Sec. 9655, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 864; re-en. Sec. 9655, R.C.M. 1935; R.C.M. 1947, 93-6904.**

27-16-1005. Officer to detain defendant — expenses. The officer making the arrest must keep the defendant in custody until he is discharged by order of the justice. The officer shall not be bound to keep such person under arrest more than 24 hours unless the plaintiff advance each day the expenses of keeping such person, which expense shall be taxed as costs in the action and in no case shall be a charge against the county.

History: En. Sec. 564, p. 154, Bannack Stat.; re-en. Sec. 670, p. 171, Cod. Stat. 1871; re-en. Sec. 730, 1st Div. Rev. Stat. 1879; re-en. Sec. 750, 1st Div. Comp. Stat. 1887; re-en. Sec. 1544, C. Civ. Proc. 1895; re-en. Sec. 7023, Rev. C. 1907; re-en. Sec. 9656, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 865; re-en. Sec. 9656, R.C.M. 1935; R.C.M. 1947, 93-6905.

27-16-1006. Defense against order of arrest. The defendant may file an answer, under oath, putting in issue the facts stated in the affidavit for the order of arrest, which may be tried by the court unless a jury is demanded; and the plaintiff shall be held to establish such facts, and if he fail to do so, the order of arrest shall be dismissed and the defendant may proceed upon the undertaking of the plaintiff for his damages occasioned by the arrest. The defendant may apply to the court to be discharged from arrest upon the ground of the insufficiency of the papers on which the order of arrest was granted.

History: En. Sec. 567, p. 155, Bannack Stat.; re-en. Sec. 673, p. 171, Cod. Stat. 1871; re-en. Sec. 733, 1st Div. Rev. Stat. 1879; re-en. Sec. 753, 1st Div. Comp. Stat. 1887; re-en. Sec. 1545, C. Civ. Proc. 1895; re-en. Sec. 7024, Rev. C. 1907; re-en. Sec. 9657, R.C.M. 1921; re-en. Sec. 9657, R.C.M. 1935; R.C.M. 1947, 93-6906.

CHAPTER 17

CLAIM AND DELIVERY OF PERSONAL PROPERTY

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Part 1

General Provisions

27-17-101. When plaintiff may claim delivery. The plaintiff in an action to recover possession of personal property may, at the time of issuing summons or at any time thereafter before answer, claim the delivery of such property to him, as provided in this chapter.

History: En. Sec. 71, p. 56, Bannack Stat.; re-en. Sec. 99, p. 151, L. 1867; re-en. Sec. 116, p. 49, Cod. Stat. 1871; re-en. Sec. 154, p. 75, L. 1877; re-en. Sec. 154, 1st Div. Rev. Stat. 1879; re-en. Sec. 156, 1st Div. Comp. Stat. 1887; re-en. Sec. 840, C. Civ. Proc. 1895; re-en. Sec. 6622, Rev. C. 1907; re-en. Sec. 9220, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 509; re-en. Sec. 9220, R.C.M. 1935; R.C.M. 1947, 93-4101.

27-17-102. Claim and delivery in justice's court. Parts 2, 3, and 4 of this chapter and Rule 55(b)(2), M.R.Civ.P., are applicable to such claim when made in justices' courts, the powers therein given and duties imposed on sheriffs being extended to constables and the word "justice" substituted for "judge", and the justice, instead of the plaintiff or his attorney, may, in his discretion, by an endorsement in writing upon the affidavit, order the sheriff or constable to take the property mentioned in the affidavit.

History: En. Sec. 572, p. 156, Bannack Stat.; re-en. Sec. 678, p. 172, Cod. Stat. 1871; re-en. Sec. 738, 1st Div. Comp. Stat. 1879; re-en. Sec. 758, 1st Div. Comp. Stat. 1887; amd. Sec. 1570, C. Civ. Proc. 1895; re-en. Sec. 7030, Rev. C. 1907; re-en. Sec. 9663, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 870; re-en. Sec. 9663, R.C.M. 1935; R.C.M. 1947, 93-6912(part).

Cross-References

Default judgment, Rule 55(b)(2), M.R.Civ.P. (see Title 25, ch. 20).

Part 2

Procedure for Obtaining Seizure of Property

27-17-201. Plaintiff's affidavit. When a delivery is claimed, an affidavit must be made by the person claiming the property or someone in his behalf, stating:

(1) facts which establish reasonable belief that the person claiming the property is the owner or is lawfully entitled to possession and that the seizure is necessary to prevent the removal or destruction of the property;

(2) that the property is wrongfully detained by the defendant;

(3) that the same has not been taken for a tax, assessment, or fine, pursuant to statute, or seized under an execution or an attachment against the property of the person claiming the property or, if so seized, that it is by statute exempt from seizure; and

(4) a particular description of the property and the actual value of the property.

History: En. Sec. 72, p. 56, Bannack Stat.; amd. Sec. 100, p. 151, L. 1867; re-en. Sec. 117, p. 49, Cod. Stat. 1871; re-en. Sec. 155, p. 75, L. 1877; re-en. Sec. 155, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 103, L. 1885; re-en. Sec. 157, 1st Div. Comp. Stat. 1887; re-en. Sec. 841, C. Civ. Proc. 1895; re-en. Sec. 6623, Rev. C. 1907; re-en. Sec. 9221, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 510; re-en. Sec. 9221, R.C.M. 1935; amd. Sec. 1, Ch. 362, L. 1975; R.C.M. 1947, 93-4102(1).

27-17-202. Description of property in affidavit. Where the affidavit describes two or more chattels of the same kind, it must state the number thereof, and where it describes a chattel in bulk, it must state the weight, measurement, or other quantity, as nearly as can be ascertained. Where it describes two or more chattels, it may, at the election of the plaintiff, state the aggregate value of all or, separately, the value of any chattel or of any class of chattels and the aggregate value of the remainder, if any.

History: En. Sec. 856, C. Civ. Proc. 1895; re-en. Sec. 6638, Rev. C. 1907; re-en. Sec. 9236, R.C.M. 1921; re-en. Sec. 9236, R.C.M. 1935; R.C.M. 1947, 93-4117(part).

27-17-203. Order from judge. The sheriff shall make no seizure unless an order from a judge of the court having jurisdiction of the cause is attached to the affidavit. The judge may sign such an order if he is satisfied:

(1) that the party seeking possession of the property has made a prima facie showing of his right to possession and the necessity for seizure at a show cause hearing before him with at least 3 days' notice to the person in possession of the property; if such person cannot be found for personal service, notice posted on the property and in three public places in the county where the property is located is sufficient service for this purpose; or

(2) that the delay caused by notice and a hearing would seriously impair the remedy sought by the party seeking possession. Evidence of such impairment must be presented in open court, and the court must set forth with specificity the reasons why such delay would seriously impair the remedy sought by the person seeking possession.

History: En. Sec. 72, p. 56, Bannack Stat.; amd. Sec. 100, p. 151, L. 1867; re-en. Sec. 117, p. 49, Cod. Stat. 1871; re-en. Sec. 155, p. 75, L. 1877; re-en. Sec. 155, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 103, L. 1885; re-en. Sec. 157, 1st Div. Comp. Stat. 1887; re-en. Sec. 841, C. Civ. Proc. 1895; re-en. Sec. 6623, Rev. C. 1907; re-en. Sec. 9221, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 510; re-en. Sec. 9221, R.C.M. 1935; amd. Sec. 1, Ch. 362, L. 1975; R.C.M. 1947, 93-4102(2).

27-17-204. Endorsement requiring sheriff to take property. The plaintiff or his attorney may thereupon, by an endorsement in writing upon the affidavit, require the sheriff of the county where the property claimed may be to take the same from the defendant.

History: En. Sec. 73, p. 56, Bannack Stat.; re-en. Sec. 101, p. 152, L. 1867; re-en. Sec. 118, p. 49, Cod. Stat. 1871; re-en. Sec. 156, p. 76, L. 1877; re-en. Sec. 156, 1st Div. Rev. Stat. 1879; re-en. Sec. 158, 1st Div. Comp. Stat. 1887; re-en. Sec. 842, C. Civ. Proc. 1895; re-en. Sec. 6624, Rev. C. 1907; re-en. Sec. 9222, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 511; re-en. Sec. 9222, R.C.M. 1935; R.C.M. 1947, 93-4103.

27-17-205. Plaintiff's undertaking — service and execution by sheriff. Upon receipt of the affidavit and notice with a written undertaking, executed by two or more sufficient sureties approved by the sheriff, to the effect that they are bound to the defendant in double the value of the property, as stated in the affidavit for the prosecution of the action, and for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, the sheriff must forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He must also, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking by delivering the same to him personally, if he can be found, or to his agent from whose possession the property is taken or, if neither can be found, by leaving them at the usual place of abode of either with some person of suitable age and discretion or, if neither have any known place of abode, by putting them in the nearest post office, directed to the defendant.

History: En. Sec. 74, p. 56, Bannack Stat.; en. Sec. 102, p. 152, L. 1867; re-en. Sec. 119, p. 49, Cod. Stat. 1871; re-en. Sec. 157, p. 76, L. 1877; re-en. Sec. 157, 1st Div. Rev. Stat. 1879; re-en. Sec. 159, 1st Div. Comp. Stat. 1887; re-en. Sec. 843, C. Civ. Proc. 1895; re-en. Sec. 6625, Rev. C. 1907; re-en. Sec. 9223, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 512; re-en. Sec. 9223, R.C.M. 1935; R.C.M. 1947, 93-4104.

27-17-206. Manner of seizure of concealed property. If the property or any part thereof be concealed in a building or enclosure, the sheriff shall publicly demand its delivery; if it be not delivered, he shall cause the building or enclosure to be broken open and take the property into his possession and, if necessary, he may call to his aid the power of the county.

History: En. Sec. 107, p. 152, L. 1867; re-en. Sec. 124, p. 50, Cod. Stat. 1871; re-en. Sec. 166, p. 79, L. 1877; re-en. Sec. 166, 1st Div. Rev. Stat. 1879; re-en. Sec. 168, 1st Div. Comp. Stat. 1887; re-en. Sec. 852, C. Civ. Proc. 1895; re-en. Sec. 6634, Rev. C. 1907; re-en. Sec. 9232, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 517; re-en. Sec. 9232, R.C.M. 1935; R.C.M. 1947, 93-4113.

27-17-207. Seizure when part of property cannot be found. The sheriff must take a less number or quantity if the whole of the property described in the affidavit cannot be found.

History: En. Sec. 857, C. Civ. Proc. 1895; re-en. Sec. 6639, Rev. C. 1907; re-en. Sec. 9237, R.C.M. 1921; re-en. Sec. 9237, R.C.M. 1935; R.C.M. 1947, 93-4118.

27-17-208. Security for sheriff's costs when property seized. If the sheriff will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of an order for claim and delivery shall provide a bond or other security to pay for all costs that may be incurred as a result of the service of such order.

History: En. Sec. 11, Ch. 88, L. 1987.

Part 3

Procedure Following Seizure by Sheriff

27-17-301. Duty of sheriff to keep and deliver property. When the sheriff shall have taken property, as in this chapter provided, he shall keep it in a secure place and deliver it to the party entitled thereto upon receiving his lawful fees for taking and his necessary expenses for keeping the same.

History: En. Sec. 108, p. 153, L. 1867; re-en. Sec. 125, p. 51, Cod. Stat. 1871; re-en. Sec. 167, p. 79, L. 1877; re-en. Sec. 167, 1st Div. Rev. Stat. 1879; re-en. Sec. 169, 1st Div. Comp. Stat. 1887; re-en. Sec. 853, C. Civ. Proc. 1895; re-en. Sec. 6635, Rev. C. 1907; re-en. Sec. 9233, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 518; re-en. Sec. 9233, R.C.M. 1935; R.C.M. 1947, 93-4114.

27-17-302. Sheriff's return of execution. The sheriff shall file the notice, undertaking, and affidavit, with his proceedings thereon, with the clerk of the court in which the action is pending within 20 days after taking the property mentioned therein.

History: En. Sec. 110, p. 153, L. 1867; re-en. Sec. 127, p. 51, Cod. Stat. 1871; re-en. Sec. 169, p. 79, L. 1877; re-en. Sec. 169, 1st Div. Rev. Stat. 1879; re-en. Sec. 171, 1st Div. Comp. Stat. 1887; re-en. Sec. 855, C. Civ. Proc. 1895; re-en. Sec. 6637, Rev. C. 1907; re-en. Sec. 9235, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 520; re-en. Sec. 9235, R.C.M. 1935; R.C.M. 1947, 93-4116.

27-17-303. Exception to plaintiff's sureties — justification — liability of sheriff. The defendant may, within 2 days after service of a copy of the affidavit and undertaking, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fails to do so, he shall be deemed to have waived all objections to them. When the defendant excepts, the sureties must justify on notice in like manner as upon bail on arrest; and the sheriff is responsible for the sufficiency of the sureties until the objection to them is waived, as above provided, or until they justify. If the defendant except to the sureties, he cannot claim the property, as provided in 27-17-304.

History: En. Sec. 103, p. 152, L. 1867; re-en. Sec. 120, p. 50, Cod. Stat. 1871; re-en. Sec. 158, p. 76, L. 1877; re-en. Sec. 158, 1st Div. Rev. Stat. 1879; re-en. Sec. 160, 1st Div. Comp. Stat. 1887; re-en. Sec. 844, C. Civ. Proc. 1895; re-en. Sec. 6626, Rev. C. 1907; re-en. Sec. 9224, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 513; re-en. Sec. 9224, R.C.M. 1935; R.C.M. 1947, 93-4105.

27-17-304. When defendant may require return of property — his undertaking. At any time before the delivery of the property to the plaintiff, the defendant may, if he does not except to the sureties of the plaintiff, require the return thereof upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant.

History: En. Sec. 104, p. 152, L. 1867; re-en. Sec. 121, p. 50, Cod. Stat. 1871; re-en. Sec. 163, p. 78, L. 1877; re-en. Sec. 163, 1st Div. Rev. Stat. 1879; re-en. Sec. 165, 1st Div. Comp. Stat. 1887; re-en. Sec. 849, C. Civ. Proc. 1895; re-en. Sec. 6631, Rev. C. 1907; re-en. Sec. 9229, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 514; re-en. Sec. 9229, R.C.M. 1935; R.C.M. 1947, 93-4110(part).

27-17-305. Return of part of the property. Where the plaintiff's affidavit states separately the value of one or more chattels or classes of chattels, the defendant may require, as prescribed in this chapter, the return of any or all of the chattels or classes of chattels the value of which is thus stated or of the portion thereof which has been taken.

History: En. Sec. 856, C. Civ. Proc. 1895; re-en. Sec. 6638, Rev. C. 1907; re-en. Sec. 9236, R.C.M. 1921; re-en. Sec. 9236, R.C.M. 1935; R.C.M. 1947, 93-4117(part).

27-17-306. Justification of defendant's sureties — liability of sheriff. The defendant's sureties, upon notice to the plaintiff of not less than 2 or more than 5 days, shall justify before the judge or clerk in the same manner as upon bail on arrest, and upon such justification the sheriff must deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify or until the justification is completed or expressly waived and may retain the property until that time; but if they or others in their place fail to justify at the time or place appointed, he shall deliver the property to the plaintiff.

History: En. Sec. 105, p. 152, L. 1867; re-en. Sec. 122, p. 50, Cod. Stat. 1871; re-en. Sec. 164, p. 78, L. 1877; re-en. Sec. 164, 1st Div. Rev. Stat. 1879; re-en. Sec. 166, 1st Div. Comp. Stat. 1887; re-en. Sec. 850, C. Civ. Proc. 1895; re-en. Sec. 6632, Rev. C. 1907; re-en. Sec. 9230, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 515; re-en. Sec. 9230, R.C.M. 1935; R.C.M. 1947, 93-4111.

27-17-307. Procedure for qualification and justification of sureties. The qualification of sureties and their justification shall be such as are prescribed by chapter 16 in respect to bail upon an order of arrest.

History: En. Sec. 106, p. 152, L. 1867; re-en. Sec. 123, p. 50, Cod. Stat. 1871; re-en. Sec. 165, p. 78, L. 1877; re-en. Sec. 165, 1st Div. Rev. Stat. 1879; re-en. Sec. 167, 1st Div. Comp. Stat. 1887; re-en. Sec. 851, C. Civ. Proc. 1895; re-en. Sec. 6633, Rev. C. 1907; re-en. Sec. 9231, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 516; re-en. Sec. 9231, R.C.M. 1935; R.C.M. 1947, 93-4112.

27-17-308. Delivery of property to plaintiff if not returned to defendant. If a return of the property be not required within 5 days after the taking and serving notice to the defendant, it shall be delivered to the plaintiff, except as provided in 27-17-309. If the defendant procures a return under 27-17-305, the remainder must be delivered to the plaintiff, except as is otherwise prescribed in this chapter.

History: Ap. p. Sec. 104, p. 152, L. 1867; re-en. Sec. 121, p. 50, Cod. Stat. 1871; re-en. Sec. 163, p. 78, L. 1877; re-en. Sec. 163, 1st Div. Rev. Stat. 1879; re-en. Sec. 165, 1st Div. Comp. Stat. 1887; re-en. Sec. 849, C. Civ. Proc. 1895; re-en. Sec. 6631, Rev. C. 1907; re-en. Sec. 9229, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 514; re-en. Sec. 9229, R.C.M. 1935; Sec. 93-4110, R.C.M. 1947; Ap. p. Sec. 856, C. Civ. Proc. 1895; re-en. Sec. 6638, Rev. C. 1907; re-en. Sec. 9236, R.C.M. 1921; re-en. Sec. 9236, R.C.M. 1935; Sec. 93-4117, R.C.M. 1947; R.C.M. 1947, 93-4110(part), 93-4117(part).

27-17-309. Claim of property by third person — plaintiff to indemnify sheriff. If the property taken be claimed by any other person than the defendant or his agent and such person make affidavit of his title thereto or right of the possession thereof, stating the grounds of such right or title, and serve the same upon the sheriff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff unless the plaintiff, on demand of him or his agent, indemnify the sheriff against such claim by an undertaking by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property, as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and are freeholders or householders in the county; and no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff unless so made.

History: En. Sec. 109, p. 153, L. 1867; re-en. Sec. 126, p. 51, Cod. Stat. 1871; re-en. Sec. 168, p. 79, L. 1877; re-en. Sec. 168, 1st Div. Rev. Stat. 1879; re-en. Sec. 170, 1st Div. Comp. Stat. 1887; re-en. Sec. 854, C. Civ. Proc. 1895; re-en. Sec. 6636, Rev. C. 1907; re-en. Sec. 9234, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 519; re-en. Sec. 9234, R.C.M. 1935; R.C.M. 1947, 93-4115.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

27-17-310. Answer of defendant claiming third person entitled to property. The defendant may, by answer, defend on the ground that a third person was entitled to the property, without connecting himself with the latter's title.

History: En. Sec. 858, C. Civ. Proc. 1895; re-en. Sec. 6640, Rev. C. 1907; re-en. Sec. 9238, R.C.M. 1921; re-en. Sec. 9238, R.C.M. 1935; R.C.M. 1947, 93-4119.

Part 4

Judgment — Return of Property

27-17-401. Form of judgment. (1) In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or the value thereof, in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff and the defendant claim a return thereof, judgment for the defendant may be for a return of the property or for the value thereof, in case a return cannot be had, and damages for taking and withholding the same.

(2) The judgment in an action for claim and delivery in justices' courts must be entered substantially in the form required by subsection (1).

History: (1)En. Sec. 176, p. 77, Bannack Stat.; re-en. Sec. 200, p. 174, L. 1867; re-en. Sec. 240, p. 77, Cod. Stat. 1871; re-en. Sec. 291, p. 115, L. 1877; re-en. Sec. 291, 1st Div. Rev. Stat. 1879; re-en. Sec. 303, 1st Div. Comp. Stat. 1887; re-en. Sec. 1193, C. Civ. Proc. 1895; re-en. Sec. 6803, Rev. C. 1907; re-en. Sec. 9406, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 667; re-en. Sec. 9406, R.C.M. 1935; Sec. 93-5704, R.C.M. 1947; (2)En. Sec. 612, p. 164, Bannack Stat.; re-en. Sec. 718, p. 179, Cod. Stat. 1871; re-en. Sec. 778, 1st Div. Rev. Stat. 1879; re-en. Sec. 798, 1st Div. Comp. Stat. 1887; amd. Sec. 1624, C. Civ. Proc. 1895; re-en. Sec. 7050, Rev. C. 1907; re-en. Sec. 9683, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 893; re-en. Sec. 9683, R.C.M. 1935; Sec. 93-7305, R.C.M. 1947; R.C.M. 1947, 93-5704, 93-7305(part).

27-17-402. Duty to return property in good condition. In all cases when a judgment is rendered, in an action to recover the possession of personal property, for the return thereof, or its value in case a return cannot be had, it is the duty of the party against whom such judgment shall be rendered to return the same in as good condition as the same was when possession thereof was taken by him.

History: En. Sec. 159, p. 77, L. 1877; re-en. Sec. 159, 1st Div. Rev. Stat. 1879; re-en. Sec. 161, 1st Div. Comp. Stat. 1887; re-en. Sec. 845, C. Civ. Proc. 1895; re-en. Sec. 6627, Rev. C. 1907; re-en. Sec. 9225, R.C.M. 1921; re-en. Sec. 9225, R.C.M. 1935; R.C.M. 1947, 93-4106.

27-17-403. Action for value of property and damages. In case such property, while in the possession of the party against whom such judgment shall be rendered or while unlawfully detained from the party entitled to the possession thereof, be materially injured or lessened in value by use or otherwise, then a return or offer to return shall not be deemed a compliance with the undertaking given for its return but an action may be maintained for the value thereof, as assessed by the jury or court, and damages for its detention.

History: En. Sec. 160, p. 77, L. 1877; re-en. Sec. 160, 1st Div. Rev. Stat. 1879; re-en. Sec. 162, 1st Div. Comp. Stat. 1887; re-en. Sec. 846, C. Civ. Proc. 1895; re-en. Sec. 6628, Rev. C. 1907; re-en. Sec. 9226, R.C.M. 1921; re-en. Sec. 9226, R.C.M. 1935; R.C.M. 1947, 93-4107.

27-17-404. Return of damaged property to officer for sale. In case such action to recover possession of personal property is brought against any sheriff or other officer who may have levied upon and seized the same under authority of any attachment or other process and judgment shall be rendered in favor of such officer for the return of the property, the party against whom such judgment is rendered may nevertheless make return of said property, notwithstanding the same may have been injured or lessened in value, and thereupon it is the duty of such officer to immediately advertise the same for sale as in cases of sales of property under execution and apply the proceeds of the sale thereof, after paying the costs, towards the payment and satisfaction of any judgment that may have been rendered.

History: **En. Sec. 161, p. 77, L. 1877; re-en. Sec. 161, 1st Div. Rev. Stat. 1879; re-en. Sec. 163, 1st Div. Comp. Stat. 1887; re-en. Sec. 847, C. Civ. Proc. 1895; re-en. Sec. 6629, Rev. C. 1907; re-en. Sec. 9227, R.C.M. 1921; re-en. Sec. 9227, R.C.M. 1935; R.C.M. 1947, 93-4108.**

27-17-405. Continuing liability of sureties. Such second taking of such property, referred to in 27-17-404, does not release or discharge the sureties on any undertaking given for the return of such property, but an action may be maintained on such undertaking and recovery thereon had unless the property shall have been actually returned in accordance with the judgment rendered.

History: **En. Sec. 162, p. 77, L. 1877; re-en. Sec. 162, 1st Div. Rev. Stat. 1879; re-en. Sec. 164, 1st Div. Comp. Stat. 1887; re-en. Sec. 848, C. Civ. Proc. 1895; re-en. Sec. 6630, Rev. C. 1907; re-en. Sec. 9228, R.C.M. 1921; re-en. Sec. 9228, R.C.M. 1935; R.C.M. 1947, 93-4109.**

CHAPTER 18

PREJUDGMENT ATTACHMENT

Part 1 — General Provisions

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Chapter Cross-References

Execution of judgment, Title 25, ch. 13.

Seizure of person or property, Rule 64, M.R.Civ.P. (see Title 25, ch. 20).

Part 1

General Provisions

27-18-101. Cases in which property may be attached. (1) Property may be attached in:

(a) an action upon a contract, express or implied, for the direct payment of money where the contract:

(i) is not secured by any mortgage or lien upon real property; or

(ii) is originally secured and such security has, without any act of the plaintiff or the person to whom the security was given, become valueless; and

(b) an action based upon a statutory stockholders' liability.

(2) Attachment may not issue if the defendant gives security to pay the judgment.

(3) For the purpose of this section, the guaranty of a loan in which the only condition precedent to the obligation of the guarantor is the default of the principal is an unconditional contract for the direct payment of money.

History: En. Sec. 890, C. Civ. Proc. 1895; re-en. Sec. 6656, Rev. C. 1907; re-en. Sec. 9256, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 537; amd. Sec. 1, Ch. 82, L. 1931; re-en. Sec. 9256, R.C.M. 1935; amd. Sec. 11-159, Ch. 264, L. 1963; amd. Sec. 1, Ch. 299, L. 1977; R.C.M. 1947, 93-4301(2), (3); amd. Sec. 1, Ch. 194, L. 1985.

27-18-102. What property subject to attachment. (1) Except as provided in subsection (2), the rights or shares which the defendant has in the stock of any corporation or company, together with the interest and profits thereon, all debts due the defendant, and all other property in this state of the defendant not exempt from execution may be attached and, if judgment is recovered, sold to satisfy the judgment and execution. Property exempt from execution is exempt from attachment.

(2) In any action in which the amount sued for is $10 or less, the wages and earnings of the debtor or defendant for his personal services rendered at any time within 30 days before the commencement of the action are exempt from attachment.

History: (1)En. Sec. 95, p. 61, Bannack Stat.; amd. Sec. 124, p. 157, L. 1867; re-en. Sec. 141, p. 55, Cod. Stat. 1871; re-en. Sec. 183, p. 84, L. 1877; re-en. Sec. 183, 1st Div. Rev. Stat. 1879; re-en. Sec. 185, 1st Div. Comp. Stat. 1887; re-en. Sec. 894, C. Civ. Proc. 1895; re-en. Sec. 6661, Rev. C. 1907; re-en. Sec. 9261, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 541; re-en. Sec. 9261, R.C.M. 1935; Sec. 93-4306, R.C.M. 1947; (2)En. Sec. 1, Ch. 49, Ex. L. 1933; re-en. Sec. 9429.1, R.C.M. 1935; Sec. 93-5817, R.C.M. 1947; R.C.M. 1947, 93-4306, 93-5817; amd. Sec. 39, Ch. 12, L. 1979.

Cross-References

Attachment and execution — government property, 2-9-318.

Public Employees' Retirement System — exemption from execution, 19-3-105.

Teachers' retirement — exemption from execution, 19-4-706.

Judges' retirement — exemption from execution, 19-5-704.

Highway patrol retirement — exemption from execution, 19-6-705.

Sheriffs' retirement — exemption from execution, 19-7-705.

Game wardens' retirement — exemption from execution, 19-8-805.

Police retirement — exemption from execution, 19-9-1006, 19-10-504.

Firefighters' retirement — exemption from execution, 19-11-612.

Property exempt from execution, Title 25, ch. 13, part 6.

Shares of stock subject to attachment, 32-2-264.

Partner's right to specific partnership property, 35-10-502, 35-10-505.

Cooperative associations — shares exempt from execution, 35-15-404.

Homestead exemption, 70-32-201.

27-18-103 through 27-18-110 reserved.

27-18-111. Court record not to be open to public until writ returned. In cases of attachment, the clerk of the court with whom the complaint is filed must not make public the fact of the filing of the complaint or the issuing of such attachment until after the filing of return of service of attachment.

History: En. Sec. 1136, Pol. C. 1895; re-en. Sec. 438, Rev. C. 1907; re-en. Sec. 455, R.C.M. 1921; Cal. Pol. C. Sec. 1032; re-en. Sec. 455, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1945; R.C.M. 1947, 59-512(part).

27-18-112. Attachment book to be kept by county clerk. There must be kept in the office of the county clerk of each county a book called "attachment book", in which must be entered by such clerk, in alphabetical order, the names of all persons against whom any writ or notice of attachment has been filed in his office. There must also be entered in said book the time such writ or notice was filed. Such entry must be made under an appropriate head for that purpose.

History: En. Sec. 203, p. 89, L. 1877; re-en. Sec. 203, 1st Div. Rev. Stat. 1879; re-en. Sec. 205, 1st Div. Comp. Stat. 1887; amd. Sec. 924, C. Civ. Proc. 1895; re-en. Sec. 6691, Rev. C. 1907; re-en. Sec. 9293, R.C.M. 1921; re-en. Sec. 9293, R.C.M. 1935; R.C.M. 1947, 93-4340.

Part 2

Procedure for Obtaining Writ

27-18-201. Time for attaching property. A plaintiff, at the time of issuing the summons or at any time afterward, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered.

History: En. Sec. 890, C. Civ. Proc. 1895; re-en. Sec. 6656, Rev. C. 1907; re-en. Sec. 9256, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 537; amd. Sec. 1, Ch. 82, L. 1931; re-en. Sec. 9256, R.C.M. 1935; amd. Sec. 11-159, Ch. 264, L. 1963; amd. Sec. 1, Ch. 299, L. 1977; R.C.M. 1947, 93-4301(1).

27-18-202. Plaintiff's affidavit. When attachment of a defendant's property is sought, an affidavit must be made by the plaintiff or someone in his behalf stating:

(1) facts which show the defendant is indebted to the plaintiff in the manner specified in 27-18-101(1);

(2) that the attachment is not sought to hinder, delay, or defraud any creditor of the defendant;

(3) facts creating a reasonable belief that the defendant:

(a) is leaving or about to leave this state taking with him property, money, or other effects which might be subjected to payment of the debt;

(b) is disposing or about to dispose of his property which would be subject to execution;

(c) has the power to dispose of or conceal or remove from the state property which would be subject to execution; or

(d) is likely to suffer liens or encumbrances on his property which would be subject to execution;

(4) a particular description and the actual value of the property to be attached.

History: En. 93-4302.1 by Sec. 2, Ch. 299, L. 1977; R.C.M. 1947, 93-4302.1.

27-18-203. Affidavit requirements when debt not yet due. Actions may be commenced and writs of attachment issued upon any debt for the payment of money or specific property before the same shall have become due when it shall appear by the affidavit, in addition to what is required in 27-18-202:

(1) that the defendant is leaving or is about to leave this state, taking with him property, moneys, or other effects which might be subjected to the payment of the debt, for the purpose of defrauding his creditors; or

(2) that the defendant is disposing of his property or is about to dispose of his property, subject to execution, for the purpose of defrauding his creditors.

History: En. Sec. 1, p. 141, L. 1899; re-en. Sec. 6658, Rev. C. 1907; amd. Sec. 1, Ch. 14, L. 1911; re-en. Sec. 9258, R.C.M. 1921; re-en. Sec. 9258, R.C.M. 1935; R.C.M. 1947, 93-4303(part).

27-18-204. Plaintiff's undertaking. Before issuing the writ, the court must require a written undertaking on the part of the plaintiff, with two or more sufficient sureties to be approved by the court, in a sum not less than double the amount claimed by the plaintiff if such amount be $1,000 or under or, in case the amount so claimed by plaintiff shall exceed $1,000, then in a sum equal to such amount. In no case shall an undertaking be required exceeding in amount the sum of $20,000. The condition of such undertaking shall be to the effect that if the defendant recovers judgment or if the court finally decides that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant and all damages he may sustain by reason of the issuing of the attachment, not exceeding the sum specified in the undertaking.

History: En. Sec. 93, p. 61, Bannack Stat.; amd. Sec. 122, p. 156, L. 1867; amd. Sec. 12, p. 65, L. 1869; amd. Sec. 7, p. 75, L. 1870; amd. Sec. 138, p. 54, Cod. Stat. 1871; amd. Sec. 20, p. 56, L. 1874; amd. Sec. 180, p. 82, L. 1877; re-en. Sec. 180, 1st Div. Rev. Stat. 1879; amd. Sec. 6, p. 9, L. 1881; re-en. Sec. 182, 1st Div. Comp. Stat. 1887; en. Sec. 892, C. Civ. Proc. 1895; re-en. Sec. 6659, Rev. C. 1907; re-en. Sec. 9259, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 539; re-en. Sec. 9259, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1951; amd. Sec. 1, Ch. 303, L. 1967; amd. Sec. 3, Ch. 299, L. 1977; R.C.M. 1947, 93-4304(1).

27-18-205. When judge may issue writ — notice. A judge of a court having jurisdiction of the cause may issue a writ of attachment when:

(1) he has received the affidavit described in 27-18-202;

(2) he has approved the undertaking required in 27-18-204; and

(3) the party seeking attachment has made a prima facie showing:

(a) in the case of real property, of his right to attachment and the necessity for seizure;

(b) in the case of personal property:

(i) of his right to attachment and the necessity for seizure at a show cause hearing before the court with at least 3 days' notice to the defendant; if the defendant cannot be found for personal service, notice shall be posted on the property and in three public places in the county where the property is located; or

(ii) of his right to attachment and the necessity for seizure and that the delay caused by notice and a hearing would seriously impair the remedy sought by the party seeking possession. Evidence of such impairment must be presented in open court, and the court must set forth with specificity the reasons why such delay would seriously impair the remedy sought by the person seeking attachment.

History: En. 93-4304.1 by Sec. 4, Ch. 299, L. 1977; R.C.M. 1947, 93-4304.1.

27-18-206. Issuance of several writs to different counties. Several writs may be issued at the same time to the sheriffs of different counties.

History: En. Sec. 94, p. 61, Bannack Stat.; amd. Sec. 123, p. 156, L. 1867; re-en. Sec. 140, p. 55, Cod. Stat. 1871; amd. Sec. 1, p. 47, L. 1874; amd. Sec. 182, p. 83, L. 1877; re-en. Sec. 182, 1st Div. Rev. Stat. 1879; re-en. Sec. 184, 1st Div. Comp. Stat. 1887; re-en. Sec. 893, C. Civ. Proc. 1895; en. Sec. 1, p. 140, L. 1899; re-en. Sec. 6660, Rev. C. 1907; re-en. Sec. 9260, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 540; re-en. Sec. 9260, R.C.M. 1935; R.C.M. 1947, 93-4305(part).

27-18-207. Alias writs. Whenever a writ of attachment has been lost or whenever it shall appear from the sheriff's return thereof that no property of the party or parties defendant has been levied upon or that the levy made is insufficient to satisfy the full amount of the plaintiff's demand or if, for any reason, the levy of the original writ is void or ineffective, the clerk of the court, upon written demand of the plaintiff or his attorney, shall issue an alias writ in the same form as the original, but no such alias writ shall be issued in an action after the commencement of the trial thereof. No new or additional affidavit or undertaking on attachment shall be required for the issuance of an alias writ. Alias writs of attachment may be issued to the sheriffs of different counties.

History: En. Sec. 1, Ch. 121, L. 1921; re-en. Sec. 9275, R.C.M. 1921; re-en. Sec. 9275, R.C.M. 1935; R.C.M. 1947, 93-4322.

Part 3

Writ of Attachment — Execution

27-18-301. Form and content of writ — defendant's undertaking to prevent levy. (1) The writ must be directed to the sheriff of any county in which property of such defendant may be and must require him to:

(a) attach and safely keep all the property of such defendant within his county, not exempt from attachment, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint; or

(b) if the defendant gives him security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached, take such undertaking.

(2) The undertaking must be to the plaintiff in the action and must be approved in writing on the back thereof by the plaintiff or his attorney or, upon their refusal, by the judge of the district court of the same county as the residence of the sheriff.

History: **En. Sec. 94, p. 61, Bannack Stat.; amd. Sec. 123, p. 156, L. 1867; re-en. Sec. 140, p. 55, Cod. Stat. 1871; amd. Sec. 1, p. 47, L. 1874; amd. Sec. 182, p. 83, L. 1877; re-en. Sec. 182, 1st Div. Rev. Stat. 1879; re-en. Sec. 184, 1st Div. Comp. Stat. 1887; re-en. Sec. 893, C. Civ. Proc. 1895; en. Sec. 1, p. 140, L. 1899; re-en. Sec. 6660, Rev. C. 1907; re-en. Sec. 9260, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 540; re-en. Sec. 9260, R.C.M. 1935; R.C.M. 1947, 93-4305(part); amd. Sec. 40, Ch. 12, L. 1979.**

27-18-302. Filing of undertaking — sheriff's liability. The sheriff shall thereupon file said undertaking with the clerk of the district court out of which said writ of attachment emanates, and such sheriff shall thereupon cease to be liable under said writ, and any and all actions on such undertaking shall be against the obligors named in such undertaking.

History: **En. Sec. 94, p. 61, Bannack Stat.; amd. Sec. 123, p. 156, L. 1867; re-en. Sec. 140, p. 55, Cod. Stat. 1871; amd. Sec. 1, p. 47, L. 1874; amd. Sec. 182, p. 83, L. 1877; re-en. Sec. 182, 1st Div. Rev. Stat. 1879; re-en. Sec. 184, 1st Div. Comp. Stat. 1887; re-en. Sec. 893, C. Civ. Proc. 1895; en. Sec. 1, p. 140, L. 1899; re-en. Sec. 6660, Rev. C. 1907; re-en. Sec. 9260, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 540; re-en. Sec. 9260, R.C.M. 1935; R.C.M. 1947, 93-4305(part).**

27-18-303. Order of execution when several writs against same defendant. The sheriff must endorse upon each writ of attachment received by him the time when the same was received, specifying the day, hour, and minute. The writ of attachment first placed in the hands of the sheriff must be executed first, and when there are several writs against the same defendant, they must be executed in the order in which they were received by the sheriff.

History: **En. Sec. 160, p. 59, Cod. Stat. 1871; re-en. Sec. 202, p. 89, L. 1877; re-en. Sec. 202, 1st Div. Rev. Stat. 1879; re-en. Sec. 204, 1st Div. Comp. Stat. 1887; amd. Sec. 920, C. Civ. Proc. 1895; re-en. Sec. 6687, Rev. C. 1907; re-en. Sec. 9288, R.C.M. 1921; re-en. Sec. 9288, R.C.M. 1935; R.C.M. 1947, 93-4335(part).**

27-18-304. When sheriff may require written specification of property to be levied upon. No written specification of property to be levied upon may be required by the sheriff, except as to property referred to in 27-18-403 and 27-18-405(2).

History: **En. Sec. 160, p. 59, Cod. Stat. 1871; re-en. Sec. 202, p. 89, L. 1877; re-en. Sec. 202, 1st Div. Rev. Stat. 1879; re-en. Sec. 204, 1st Div. Comp. Stat. 1887; amd. Sec. 920, C. Civ. Proc. 1895; re-en. Sec. 6687, Rev. C. 1907; re-en. Sec. 9288, R.C.M. 1921; re-en. Sec. 9288, R.C.M. 1935; R.C.M. 1947, 93-4335(part); amd. Sec. 41, Ch. 12, L. 1979.**

27-18-305. Security for sheriff's costs. If the sheriff will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of a writ of attachment shall provide a bond or other security to pay for all costs which may be incurred as a result of the service of such writ.

History: **En. Sec. 4393, Pol. C. 1895; re-en. Sec. 3022, Rev. C. 1907; re-en. Sec. 4786, R.C.M. 1921; Cal. Pol. C. Sec. 4185; re-en. Sec. 4786, R.C.M. 1935; amd. Sec. 1, Ch. 426, L. 1977; R.C.M. 1947, 16-2714(part).**

27-18-306. Sheriff's duty to execute. The sheriff to whom the writ is directed and delivered must execute the same without delay and, if the undertaking mentioned in 27-18-301 be not given, as provided in part 4. He may levy, from time to time and as often as is necessary, until the amount for which it was issued has been secured. In no case shall the sheriff attach more property than appears necessary to satisfy the plaintiff's demand.

History: **Ap. p. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; Sec. 93-4307, R.C.M. 1947; Ap. p. Sec. 898, C. Civ. Proc. 1895; re-en. Sec. 6665, Rev. C. 1907; re-en. Sec. 9265, R.C.M. 1921; re-en. Sec. 9265, R.C.M. 1935; Sec. 93-4312, R.C.M. 1947; Ap. p. Sec. 94, p. 61, Bannack Stat.; amd. Sec. 123, p. 156, L. 1867; re-en. Sec. 140, p. 55, Cod. Stat. 1871; amd. Sec. 1, p. 47, L. 1874; amd. Sec. 182, p. 83, L. 1877; re-en. Sec. 182, 1st Div. Rev. Stat. 1879; re-en. Sec. 184, 1st Div. Comp. Stat. 1887; re-en. Sec. 893, C. Civ. Proc. 1895; en. Sec. 1, p. 140, L. 1899; re-en. Sec. 6660, Rev. C. 1907; re-en. Sec. 9260, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 540; re-en. Sec. 9260, R.C.M. 1935; R.C.M. 1947, 93-4305(part), 93-4307(part), 93-4312(part).**

Cross-References

Refusal of Sheriff to levy — liability, 7-32-2131.

27-18-307. Lien of attachment. All liens by attachment shall accrue at the time the property of the defendant shall be attached by the officer charged with the execution of the writ, in the order in which the writs are levied, and said lien shall not be affected by any subsequent attachment or by any judgment obtained subsequent thereto.

History: **En. Sec. 160, p. 59, Cod. Stat. 1871; re-en. Sec. 202, p. 89, L. 1877; re-en. Sec. 202, 1st Div. Rev. Stat. 1879; re-en. Sec. 204, 1st Div. Comp. Stat. 1887; amd. Sec. 920, C. Civ. Proc. 1895; re-en. Sec. 6687, Rev. C. 1907; re-en. Sec. 9288, R.C.M. 1921; re-en. Sec. 9288, R.C.M. 1935; R.C.M. 1947, 93-4335(part).**

27-18-308. Attachment not released by defendant's death. The death of the defendant does not release the attached property, and a lien of the attachment may be enforced as in the case of other liens.

History: **En. Sec. 907, C. Civ. Proc. 1895; re-en. Sec. 6674, Rev. C. 1907; re-en. Sec. 9274, R.C.M. 1921; re-en. Sec. 9274, R.C.M. 1935; R.C.M. 1947, 93-4321.**

Part 4

Manner of Attaching Property

27-18-401. Sheriff to take custody of books and evidences of title. The sheriff must take into his custody all books of account, vouchers, and other papers relating to the personal property attached and all evidences of the defendant's title to the real property attached, which he must safely keep.

History: **En. Sec. 898, C. Civ. Proc. 1895; re-en. Sec. 6665, Rev. C. 1907; re-en. Sec. 9265, R.C.M. 1921; re-en. Sec. 9265, R.C.M. 1935; R.C.M. 1947, 93-4312(part).**

27-18-402. Real property in defendant's name. Real property standing upon the records of the county in the name of the defendant must be attached by filing with the county clerk a copy of the writ, together with the description of the property attached and a notice that it is attached.

History: En. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; R.C.M. 1947, 93-4307(1).

27-18-403. Real property in another's name. Real property or an interest therein belonging to the defendant and held by any other person or standing on the records of the county in the name of any other person must be attached by filing with the county clerk a copy of the writ, together with a description of the property and a notice that such real property and any interest of the defendant therein, held by or standing in the name of such other person (naming him), are attached. The county clerk must index such attachment when filed in the names both of the defendant and of the person by whom the property is held or in whose name it stands on the record.

History: En. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; R.C.M. 1947, 93-4307(2).

27-18-404. Personal property capable of manual delivery. Personal property capable of manual delivery must be attached by taking it into custody, except in cases in which personal property capable of manual delivery is in the possession of a third person, and such personal property, so in the possession of a third person, may be attached in the same manner as debts or credits and other personal property not capable of manual delivery, as hereinafter provided.

History: En. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; R.C.M. 1947, 93-4307(3).

27-18-405. Debts, credits, and personal property in control of third person or not capable of manual delivery. (1) Debts or credits and personal property not capable of manual delivery and personal property in the possession of a third person must be attached by leaving with the person owing such debt or having in his possession or under his control such credits and personal property or with his agent a copy of the writ and a notice that the debts owing by him to the defendant or the credits and other personal property in his possession or under his control, belonging to the defendant, are attached in pursuance of such writ.

(2) Upon receiving information in writing from the plaintiff or his attorney that any person has in his possession or under his control any credits or other personal property belonging to the defendant or is owing any debt to the defendant, the sheriff must serve upon such person a copy of the writ and

a notice that such credits or other property or debts, as the case may be, are attached in pursuance of said writ.

(3) Debts and credits attached may be collected by the sheriff if the same can be done without suit. The sheriff's receipt is a sufficient discharge for the amount paid.

History: (1)En. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; Sec. 93-4307, R.C.M. 1947; (2)En. Sec. 97, p. 62, Bannack Stat.; re-en. Sec. 126, p. 157, L. 1867; re-en. Sec. 144, p. 56, Cod. Stat. 1871; re-en. Sec. 186, p. 85, L. 1877; re-en. Sec. 186, 1st Div. Rev. Stat. 1879; re-en. Sec. 188, 1st Div. Comp. Stat. 1887; re-en. Sec. 899, C. Civ. Proc. 1895; re-en. Sec. 6666, Rev. C. 1907; re-en. Sec. 9266, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 543; re-en. Sec. 9266, R.C.M. 1935; Sec. 93-4313, R.C.M. 1947; (3)En. Sec. 101, p. 63, Bannack Stat.; re-en. Sec. 130, p. 158, L. 1867; re-en. Sec. 148, p. 57, Cod. Stat. 1871; re-en. Sec. 190, p. 86, L. 1877; re-en. Sec. 190, 1st Div. Rev. Stat. 1879; re-en. Sec. 192, 1st Div. Comp. Stat. 1887; re-en. Sec. 903, C. Civ. Proc. 1895; re-en. Sec. 6670, Rev. C. 1907; re-en. Sec. 9270, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 547; re-en. Sec. 9270, R.C.M. 1935; Sec. 93-4317, R.C.M. 1947; R.C.M. 1947, 93-4307(5), 93-4313, 93-4317(part).

27-18-406. Money, credits, or other property in control of public officer or board. Money, credits, or other property belonging to or due and owing to another, in the possession of or under the control of a public officer or board, including all officers or boards of a county, municipal corporation, and school district or state board or state government, may be attached or garnished while in such possession or under such control by making service, as provided in this part, upon the clerk of the county or chairman of the board of county commissioners, the city clerk or mayor of a municipal corporation, or the clerk of the board of school trustees or chairman of such board, as the case may be.

History: En. Sec. 1, p. 159, L. 1901; re-en. Sec. 6692, Rev. C. 1907; re-en. Sec. 9294, R.C.M. 1921; re-en. Sec. 9294, R.C.M. 1935; R.C.M. 1947, 93-4341.

27-18-407. Liability of third persons controlling property or debts and served by sheriff. All persons having in their possession or under their control any credits or other personal property belonging to the defendant or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice shall be, unless such property be delivered up or transferred or such debts be paid to the sheriff, liable to the plaintiff for the amount of such credits, property, or debts until the attachment be discharged or any judgment recovered by him be satisfied.

History: En. Sec. 98, p. 62, Bannack Stat.; re-en. Sec. 127, p. 157, L. 1867; re-en. Sec. 145, p. 56, Cod. Stat. 1871; re-en. Sec. 187, p. 85, L. 1877; re-en. Sec. 187, 1st Div. Rev. Stat. 1879; re-en. Sec. 189, 1st Div. Comp. Stat. 1887; re-en. Sec. 900, C. Civ. Proc. 1895; re-en. Sec. 6667, Rev. C. 1907; re-en. Sec. 9267, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 544; re-en. Sec. 9267, R.C.M. 1935; R.C.M. 1947, 93-4314.

27-18-408. Judgments. Judgments standing in favor of and in the name of the defendant upon the records of the clerk of the district court must be attached by leaving with the said clerk of the district court a copy of the writ and a notice stating that the said judgment is attached in pursuance of such writ. The clerk of the district court must index and keep a record of all attachments of judgments thereunder, and such attachment is binding on the judgment creditor.

History: En. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; R.C.M. 1947, 93-4307(6).

27-18-409. Investment securities and stocks. Investment securities, as defined in the Uniform Commercial Code, may be attached or levied upon only by seizure by the officer making the attachment or levy; provided that such a security which has been surrendered to the issuer may be attached or levied upon by leaving with the president or other head of the same or the secretary, cashier, or other managing agent thereof a copy of the writ and a notice stating that the security of the defendant is attached in pursuance of such writ. Stocks or shares or interest in stocks or shares of any corporation or company, other than such investment securities, may be attached either by seizure or by leaving with the president or other head of the same or the secretary, cashier, or other managing agent thereof a copy of the writ and a notice stating that the stock or interest of the defendant is attached in pursuance of such writ.

History: En. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; R.C.M. 1947, 93-4307(4).

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

U.C.C. — attachment or levy upon security, 30-8-317.

27-18-410. Corporate stock — service on secretary of state. In addition to the method prescribed in 27-18-409 for attaching stock or shares or interest therein of any corporation or company, if the president or other head of the same or the secretary, cashier, or other managing agent thereof does not live or cannot be found in Montana and an affidavit is filed in the office of the clerk of the court in which the action is pending setting forth that such officer or agent does not live or cannot be found in Montana, the clerk shall make an order directing the writ to be served upon the secretary of state of Montana or, in his absence from his office, upon the deputy secretary of state. When such order has been made, the writ of attachment shall be served upon the secretary of state or deputy secretary of state by leaving with him a copy of the writ and a notice that the stock or shares or interest therein of such corporation or company belonging to the defendant is attached in pursuance of the writ.

History: En. Sec. 1, Ch. 128, L. 1937; R.C.M. 1947, 93-4308; amd. Sec. 42, Ch. 12, L. 1979.

27-18-411. Duty of secretary of state — fees. (1) Upon such service being so made upon the secretary of state or his deputy, the secretary of state or his deputy shall promptly mail the copy of the writ, notice, and copy of said order by registered or certified mail to the address of such corporation at its principal home office, as shown by the papers on file in the office of secretary of state, and shall make out and mail to the clerk of the court in which the action is pending a certificate of such mailing, which shall have attached thereto the registry receipt for such letter, that such attachment so made upon the secretary of state as herein provided shall be effective and the said stock or shares or the interest therein of the defendant shall be attached upon the service of the writ, as herein provided.

(2) At the time of the service of said writ, there shall be paid to the secretary of state a fee of $2, which shall be by him paid into the state treasury and which may be taxed as cost by the plaintiff.

History: **En. Sec. 2, Ch. 128, L. 1937; R.C.M. 1947, 93-4309.**

27-18-412. Interest of defendant in decedent's estate. The interest of a defendant in personal property belonging to the estate of a decedent, whether as heir, legatee, or devisee, may be attached by serving the personal representative of the decedent with a copy of the writ and a notice that said interest is attached. Such attachment shall not impair the powers of the representative over the property for the purposes of administration. A copy of said writ of attachment and of said notice shall also be filed in the office of the clerk of the court in which said estate is being administered, and the personal representative shall report such attachment to the court when any petition for distribution is filed; and in the decree made upon such petition, distribution shall be ordered to such heir, legatee, or devisee, but delivery of such property shall be ordered to the officer making the levy, subject to the claim of such heir, legatee, or devisee or any person claiming under him. The property shall not be delivered to the officer making the levy until the decree distributing such interest has become final.

History: **En. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; R.C.M. 1947, 93-4307(7).**

27-18-413. Personal property subject to a security interest. Personal property subject to a security interest may be taken on attachment issued at the suit of a creditor (other than the secured party) of the debtor under the security agreement; but before the property is taken, the officer levying the writ must pay or tender to the secured party the amount of the security agreement debt and interest or must deposit the same with the county treasurer of the county in which the financing statement covering the security agreement is filed if such statement is filed with a county clerk and recorder or, if such statement is filed with another filing officer pursuant to law, with such other filing officer, payable to the order of the secured party.

History: **En. Sec. 1, Ch. 111, L. 1921; re-en. Sec. 9291, R.C.M. 1921; re-en. Sec. 9291, R.C.M. 1935; amd. Sec. 11-162, Ch. 264, L. 1963; R.C.M. 1947, 93-4338(part); amd. Sec. 43, Ch. 12, L. 1979.**

27-18-414. Duty of secured party. (1) The secured party under any security agreement of record shall, upon 15 days' notice in writing served upon him in person by any creditor of the debtor seeking to satisfy a demand of such creditor against the debtor, be required to make and file in the office of the county clerk and recorder or other filing officer with whom the financing statement covering the security agreement is filed an affidavit showing the amount of the indebtedness then actually due and owing to the secured party; and such affidavit shall state the amount of the original obligation for which the security agreement was given as security, all additional advancement of money or property on the principal obligation since the date of the execution of the security agreement, all payments of whatsoever kind, whether on principal or interest, made by the debtor to the date of the execution of such affidavit by the secured party, and the balance then remaining due and unpaid to the secured party. If, within 15 days from the service of any such demand in writing on the secured party by any creditor of the debtor, the secured party shall fail, refuse, or neglect to file the affidavit herein required, the security agreement shall be of no force or effect as against such creditor upon the seizure of any such personal property on attachment.

(2) In the event the amount shown to be due is paid to the county treasurer or to a filing officer, as aforesaid, or to the secured party in satisfaction of the security agreement by any attaching creditor against the debtor, the secured party shall be required to surrender to the county treasurer or such filing officer the security agreement and any note or other evidence of indebtedness secured thereby, which security agreement or other evidence of indebtedness shall be delivered by the secured party, county treasurer, or filing officer to the attaching creditor.

History: **En. Sec. 1, Ch. 111, L. 1921; re-en. Sec. 9291, R.C.M. 1921; re-en. Sec. 9291, R.C.M. 1935; amd. Sec. 11-162, Ch. 264, L. 1963; R.C.M. 1947, 93-4338(part).**

Part 5

Proceedings in Aid of Attachment

27-18-501. Examination under oath of defendant or person controlling property or debts — order that property be delivered. Any person owing debts to the defendant or having in his possession or under his control any credits or other personal property belonging to the defendant may be required to attend before the court or judge or referee appointed by the court or judge and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property and may be examined on oath. The court or judge may, after such examination, order personal property capable of manual delivery in the hands or under the control of such person or of the defendant to be delivered to the sheriff on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

History: **En. Sec. 99, p. 62, Bannack Stat.; re-en. Sec. 128, p. 158, L. 1867; re-en. Sec. 146, p. 56, Cod. Stat. 1871; re-en. Sec. 188, p. 86, L. 1877; re-en. Sec. 188, 1st Div. Rev. Stat. 1879; re-en. Sec. 190, 1st Div. Comp. Stat. 1887; re-en. Sec. 901, C. Civ. Proc. 1895; re-en. Sec. 6668, Rev. C. 1907; re-en. Sec. 9268, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 545; re-en. Sec. 9268, R.C.M. 1935; R.C.M. 1947, 93-4315.**

27-18-502. Person holding property to give sheriff certificate of defendant's interest. Upon the application of a sheriff holding a writ of attachment, the president or other head of an association or corporation or the secretary, cashier, or managing agent thereof or a debtor of the defendant or a person holding property, including a bond, promissory note, or other instrument for the payment of money, belonging to the defendant must furnish to the sheriff a certificate, under his hand, specifying his right to a number of shares of the defendant in the stock of the association or corporation, with all dividends declared or encumbrances thereon, or the amount, nature, and description of the property held for the benefit of the defendant or of the defendant's interest in property so held or of the debt or demand owing to the defendant, as the case requires.

History: En. Sec. 896, C. Civ. Proc. 1895; re-en. Sec. 6663, Rev. C. 1907; re-en. Sec. 9263, R.C.M. 1921; re-en. Sec. 9263, R.C.M. 1935; R.C.M. 1947, 93-4310.

27-18-503. Order to person holding property to submit to examination under oath. If a person to whom application is made, as prescribed in 27-18-502, refuses to give such certificate or if it is made to appear, by affidavit, to the satisfaction of the court or a judge thereof, that there is reason to suspect that a certificate given by him is untrue or that it failed fully to set forth the facts required to be shown thereby, the court or judge may make an order directing him to attend, at a specified time and at a place within the county to which the writ is issued, and submit to an examination under oath concerning the same. The order may, in the discretion of the court or judge, direct an appearance before a referee named therein.

History: En. Sec. 897, C. Civ. Proc. 1895; re-en. Sec. 6664, Rev. C. 1907; re-en. Sec. 9264, R.C.M. 1921; re-en. Sec. 9264, R.C.M. 1935; R.C.M. 1947, 93-4311.

Part 6

Procedure Following Attachment — Return of Writ

27-18-601. Sheriff to retain nonperishable attached property and proceeds of sales. The proceeds and other property attached by the sheriff must be retained by him to answer any judgment that may be recovered in the action unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment.

History: En. Sec. 101, p. 63, Bannack Stat.; re-en. Sec. 130, p. 158, L. 1867; re-en. Sec. 148, p. 57, Cod. Stat. 1871; re-en. Sec. 190, p. 86, L. 1877; re-en. Sec. 190, 1st Div. Rev. Stat. 1879; re-en. Sec. 192, 1st Div. Comp. Stat. 1887; re-en. Sec. 903, C. Civ. Proc. 1895; re-en. Sec. 6670, Rev. C. 1907; re-en. Sec. 9270, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 547; re-en. Sec. 9270, R.C.M. 1935; R.C.M. 1947, 93-4317(part).

27-18-602. Claim of attached property by third person — plaintiff to indemnify sheriff. If personal property attached be claimed by a third person, he shall give notice thereof to the sheriff and deliver to him an affidavit, stating his claim, ownership, and a description of the property; and unless the plaintiff, within 10 days after receiving notice thereof, give the sheriff a good and sufficient bond to indemnify him against loss or damage by reason of such retaining said property, the sheriff shall deliver the same to such person.

History: En. Sec. 149, p. 57, Cod. Stat. 1871; re-en. Sec. 191, p. 87, L. 1877; re-en. Sec. 191, 1st Div. Rev. Stat. 1879; re-en. Sec. 193, 1st Div. Comp. Stat. 1887; en. Sec. 906, C. Civ. Proc.

1895; re-en. Sec. 6673, Rev. C. 1907; re-en. Sec. 9273, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 549; re-en. Sec. 9273, R.C.M. 1935; R.C.M. 1947, 93-4320.

Cross-References
Indemnity, Title 28, ch. 11, part 3.

27-18-603. Sheriff's inventory of attached property — cooperation of persons controlling credits or debts. (1) The sheriff must make a full inventory of the property attached and return the same with the writ. When the sheriff has levied several writs of attachment on the same property, only one inventory must be made.

(2) To enable him to make such return as to debts and credits attached, he must request, at the time of service, the person owing the debt or having the credit to give him the memorandum, stating the amount and description of each; and if such memorandum be refused, the sheriff may apply upon 1 day's notice to the court or judge for an order to compel such memorandum to be given. If the order be granted, it shall also direct the payment of costs of the motion by the person refusing.

History: En. Sec. 100, p. 63, Bannack Stat.; amd. Sec. 129, p. 158, L. 1867; re-en. Sec. 147, p. 57, Cod. Stat. 1871; re-en. Sec. 189, p. 86, L. 1877; re-en. Sec. 189, 1st Div. Rev. Stat. 1879; re-en. Sec. 191, 1st Div. Comp. Stat. 1887; re-en. Sec. 902, C. Civ. Proc. 1895; re-en. Sec. 6669, Rev. C. 1907; re-en. Sec. 9269, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 546; re-en. Sec. 9269, R.C.M. 1935; R.C.M. 1947, 93-4316.

27-18-604. Sheriff's return of writ. The sheriff must return the writ of attachment with the summons if issued at the same time, otherwise, within 20 days after its receipt, with a certificate of his proceedings endorsed thereon or attached thereto.

History: En. Sec. 114, p. 66, Bannack Stat.; re-en. Sec. 141, p. 160, L. 1867; re-en. Sec. 159, p. 59, Cod. Stat. 1871; re-en. Sec. 201, p. 89, L. 1877; re-en. Sec. 201, 1st Div. Rev. Stat. 1879; re-en. Sec. 203, 1st Div. Comp. Stat. 1887; amd. Sec. 919, C. Civ. Proc. 1895; re-en. Sec. 6686, Rev. C. 1907; re-en. Sec. 9287, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 559; re-en. Sec. 9287, R.C.M. 1935; R.C.M. 1947, 93-4334(part).

Part 7

Methods of Defending Against Attachment

27-18-701. Right to hearing following seizure without notice — notice of right. When a writ has been issued upon real property or upon the showing specified in 27-18-205(3)(b)(ii), the defendant may challenge the seizure of the property at a hearing before the court to be held within 3 days after the seizure. Notice of the right to a postseizure hearing shall be served personally on the defendant, or if the defendant cannot be found for personal service, notice shall be posted on the property and in three public places in the county where the property is located.

History: En. 93-4304.2 by Sec. 5, Ch. 299, L. 1977; R.C.M. 1947, 93-4304.2(1).

27-18-702. When writ quashed. At such hearing the defendant may challenge the merit of the underlying action, the need for the prejudgment seizure of property, or both. The writ shall be quashed if the court makes a preliminary finding that:

(1) the plaintiff cannot establish the prima facie validity of his claim; or

(2) the plaintiff cannot establish by a preponderance of the evidence the need for the continued attachment of the defendant's property.

History: En. 93-4304.2 by Sec. 5, Ch. 299, L. 1977; R.C.M. 1947, 93-4304.2(2).

27-18-703 through 27-18-710 reserved.

27-18-711. Motion to discharge writ improperly issued. The defendant may also, at any time either before or after the release of the attached property or before any attachment shall have been actually levied, apply on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought or to a judge thereof that the writ of attachment be discharged on the ground that the same was improperly or irregularly issued.

History: En. Sec. 138, p. 160, L. 1867; re-en. Sec. 156, p. 59, Cod. Stat. 1871; amd. Sec. 1, p. 48, L. 1874; amd. Sec. 198, p. 89, L. 1877; re-en. Sec. 198, 1st Div. Rev. Stat. 1879; re-en. Sec. 200, 1st Div. Comp. Stat. 1887; en. Sec. 914, C. Civ. Proc. 1895; re-en. Sec. 6681, Rev. C. 1907; re-en. Sec. 9282, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 556; re-en. Sec. 9282, R.C.M. 1935; R.C.M. 1947, 93-4329.

27-18-712. Use of affidavits to support or oppose motion. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence in addition to those on which the attachment was made.

History: En. Sec. 139, p. 160, L. 1867; re-en. Sec. 157, p. 59, Cod. Stat. 1871; re-en. Sec. 199, p. 89, L. 1877; re-en. Sec. 199, 1st Div. Rev. Stat. 1879; re-en. Sec. 201, 1st Div. Comp. Stat. 1887; re-en. Sec. 915, C. Civ. Proc. 1895; re-en. Sec. 6682, Rev. C. 1907; re-en. Sec. 9283, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 557; re-en. Sec. 9283, R.C.M. 1935; R.C.M. 1947, 93-4330.

27-18-713. Decision of court. If upon such application it satisfactorily appears that the writ of attachment was improperly or irregularly issued, it must be discharged. But the court or judge may allow the plaintiff to amend his affidavit or undertaking.

History: En. Sec. 140, p. 160, L. 1867; re-en. Sec. 158, p. 59, Cod. Stat. 1871; re-en. Sec. 200, p. 89, L. 1877; re-en. Sec. 200, 1st Div. Rev. Stat. 1879; re-en. Sec. 202, 1st Div. Comp. Stat. 1887; amd. Sec. 916, C. Civ. Proc. 1895; re-en. Sec. 6683, Rev. C. 1907; re-en. Sec. 9284, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 558; re-en. Sec. 9284, R.C.M. 1935; R.C.M. 1947, 93-4331.

27-18-714 reserved.

27-18-715. Exception to plaintiff's sureties. At any time within 30 days after the service of summons, the defendant may except to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them.

History: En. Sec. 93, p. 61, Bannack Stat.; amd. Sec. 122, p. 156, L. 1867; amd. Sec. 12, p. 65, L. 1869; amd. Sec. 7, p. 75, L. 1870; amd. Sec. 138, p. 54, Cod. Stat. 1871; amd. Sec. 20, p. 56, L. 1874; amd. Sec. 180, p. 82, L. 1877; re-en. Sec. 180, 1st Div. Rev. Stat. 1879; amd. Sec. 6, p. 9, L. 1881; re-en. Sec. 182, 1st Div. Comp. Stat. 1887; en. Sec. 892, C. Civ. Proc. 1895; re-en. Sec. 6659, Rev. C. 1907; re-en. Sec. 9259, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 539; re-en. Sec. 9259, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1951; amd. Sec. 1, Ch. 303, L. 1967; amd. Sec. 3, Ch. 299, L. 1977; R.C.M. 1947, 93-4304(2).

Cross-References

Suretyship, Title 28, ch. 11, part 4.

27-18-716. Justification of sureties. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than 2 days or more than

10 days, must justify before a judge of the district court, and upon failure to justify or if others in their place fail to justify at the time and place appointed, the judge shall issue an order vacating the writ of attachment.

History: En. Sec. 93, p. 61, Bannack Stat.; amd. Sec. 122, p. 156, L. 1867; amd. Sec. 12, p. 65, L. 1869; amd. Sec. 7, p. 75, L. 1870; amd. Sec. 138, p. 54, Cod. Stat. 1871; amd. Sec. 20, p. 56, L. 1874; amd. Sec. 180, p. 82, L. 1877; re-en. Sec. 180, 1st Div. Rev. Stat. 1879; amd. Sec. 6, p. 9, L. 1881; re-en. Sec. 182, 1st Div. Comp. Stat. 1887; en. Sec. 892, C. Civ. Proc. 1895; re-en. Sec. 6659, Rev. C. 1907; re-en. Sec. 9259, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 539; re-en. Sec. 9259, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1951; amd. Sec. 1, Ch. 303, L. 1967; amd. Sec. 3, Ch. 299, L. 1977; R.C.M. 1947, 93-4304(3).

27-18-717 through 27-18-720 reserved.

27-18-721. Proceedings to release attachment. Whenever the defendant has appeared in the action, he may, upon reasonable notice to the plaintiff, apply to the court in which the action is pending or to the judge thereof for an order to discharge the attachment, wholly or in part; and upon the execution of the undertaking mentioned in 27-18-722, an order may be made releasing from the operation of the attachment any or all of the property attached; and all of the property so released and all of the proceeds of the sale thereof must be delivered to the defendant upon the justification of the sureties on the undertaking, if required by the plaintiff.

History: En. Sec. 108, p. 65, Bannack Stat.; re-en. Sec. 136, p. 159, L. 1867; amd. Sec. 154, p. 58, Cod. Stat. 1871; re-en. Sec. 196, p. 88, L. 1877; re-en. Sec. 196, 1st Div. Rev. Stat. 1879; re-en. Sec. 198, 1st Div. Comp. Stat. 1887; amd. Sec. 912, C. Civ. Proc. 1895; re-en. Sec. 6679, Rev. C. 1907; re-en. Sec. 9280, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 554; re-en. Sec. 9280, R.C.M. 1935; R.C.M. 1947, 93-4327.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

27-18-722. Defendant's undertaking — justification of sureties. Before making such order, the court or judge must require an undertaking on behalf of the defendant, by at least two sureties, residents and freeholders or householders in the state, to the effect that in case the plaintiff recover judgment in the action, the defendant will, on demand, redeliver the attached property so released to the proper officer to be applied to the payment of the judgment or, in default thereof, that the defendant and sureties will, on demand, pay to the plaintiff the full value of the property released. The court or judge making the order may fix the sum for which the undertaking shall be executed, and if necessary in fixing such sum to know the value of the property released, the same may be appraised by one or more disinterested persons to be appointed for that purpose. The sureties may be required to justify before the court or judge, and the property attached cannot be released without their justification, if the same be required.

History: En. Sec. 109, p. 65, Bannack Stat.; en. Sec. 137, p. 159, L. 1867; amd. Sec. 2, p. 67, L. 1869; re-en. Sec. 155, p. 58, Cod. Stat. 1871; amd. Sec. 1, p. 48, L. 1874; amd. Sec. 197, p. 88, L. 1877; re-en. Sec. 197, 1st Div. Rev. Stat. 1879; re-en. Sec. 199, 1st Div. Comp. Stat. 1887; amd. Sec. 913, C. Civ. Proc. 1895; re-en. Sec. 6680, Rev. C. 1907; re-en. Sec. 9281, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 555; re-en. Sec. 9281, R.C.M. 1935; R.C.M. 1947, 93-4328.

27-18-723 and 27-18-724 reserved.

27-18-725. Motion to vacate or modify writ or increase security. The defendant or a person who has acquired a lien upon or interest in his property after it was attached may, at any time before the actual application of the attached property or the proceeds thereof to the payment of a judgment recovered in the action, apply to vacate or modify the writ of attachment or to increase the security given by the plaintiff or for one or more of those forms of release together or in the alternative.

History: **En. Sec. 917, C. Civ. Proc. 1895; re-en. Sec. 6684, Rev. C. 1907; re-en. Sec. 9285, R.C.M. 1921; re-en. Sec. 9285, R.C.M. 1935; R.C.M. 1947, 93-4332.**

27-18-726. Proceedings on motion. An application specified in 27-18-725 may be founded only upon:

(1) the papers upon which the writ was granted, in which case it must be made to the court or judge, with or without notice as the court or judge deems proper; or

(2) proof by affidavits on the part of the defendant or a person who has acquired a lien upon or interest in his property after it was attached, in which case it must be made to the court or judge upon notice and may be opposed by new proof, by affidavit or other evidence on the part of the plaintiff, tending to sustain any grounds of attachment.

History: **En. Sec. 918, C. Civ. Proc. 1895; re-en. Sec. 6685, Rev. C. 1907; re-en. Sec. 9286, R.C.M. 1921; re-en. Sec. 9286, R.C.M. 1935; R.C.M. 1947, 93-4333.**

27-18-727 through 27-18-730 reserved.

27-18-731. Filing of order discharging or releasing attachment of real property. Whenever an order has been made discharging or releasing an attachment upon real property, a certified copy of such order must be filed in the office of the county clerk in which the notice of the attachment has been filed and be indexed in like manner.

History: **En. Sec. 114, p. 66, Bannack Stat.; re-en. Sec. 141, p. 160, L. 1867; re-en. Sec. 159, p. 59, Cod. Stat. 1871; re-en. Sec. 201, p. 89, L. 1877; re-en. Sec. 201, 1st Div. Rev. Stat. 1879; re-en. Sec. 203, 1st Div. Comp. Stat. 1887; amd. Sec. 919, C. Civ. Proc. 1895; re-en. Sec. 6686, Rev. C. 1907; re-en. Sec. 9287, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 559; re-en. Sec. 9287, R.C.M. 1935; R.C.M. 1947, 93-4334(part).**

27-18-732. Release of attachment of real property by clerk when action not prosecuted — filing. If a writ of attachment has been levied on real property, as provided in part 4, and no proceedings have been taken in the action in which the attachment was issued for a period of 5 years, the clerk of court shall, upon application of the defendant or the record owner of such real property, issue a release of the attachment and a copy of such release shall be filed with the county clerk where the writ of attachment and notice thereof is filed and the county clerk shall file and index such release as any other releases of attachment.

History: **En. Sec. 1, Ch. 97, L. 1965; R.C.M. 1947, 93-4331.1.**

Part 8

Sale of Attached Property

27-18-801. Sheriff to sell perishable property. If any of the property attached be perishable, the sheriff must sell the same in the manner in which such property is sold on execution.

History: **En. Sec. 101, p. 63, Bannack Stat.; re-en. Sec. 130, p. 158, L. 1867; re-en. Sec. 148, p. 57, Cod. Stat. 1871; re-en. Sec. 190, p. 86, L. 1877; re-en. Sec. 190, 1st Div. Rev. Stat. 1879;**

re-en. Sec. 192, 1st Div. Comp. Stat. 1887; re-en. Sec. 903, C. Civ. Proc. 1895; re-en. Sec. 6670, Rev. C. 1907; re-en. Sec. 9270, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 547; re-en. Sec. 9270, R.C.M. 1935; R.C.M. 1947, 93-4317(part).

27-18-802. Authority of court to order sale of property. Whenever property has been taken by an officer under a writ of attachment and it is made to appear satisfactorily to the court or a judge thereof that the interest of the parties to the action will be subserved by a sale thereof, the court or judge may order such property to be sold in the same manner as property is sold under an execution and the proceeds to be deposited in the court to abide the judgment in the action.

History: En. Sec. 437, p. 132, Bannack Stat.; re-en. Sec. 594, p. 157, Cod. Stat. 1871; re-en. Sec. 524, p. 177, L. 1877; re-en. Sec. 524, 1st Div. Rev. Stat. 1879; re-en. Sec. 541, 1st Div. Comp. Stat. 1887; amd. Sec. 904, C. Civ. Proc. 1895; re-en. Sec. 6671, Rev. C. 1907; re-en. Sec. 9271, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 548; re-en. Sec. 9271, R.C.M. 1935; R.C.M. 1947, 93-4318.

27-18-803. Notice of application for order to sell. Application for the order shall be upon such notice to the adverse party or his attorney as the court or judge, considering the nature and condition of the property, may direct. If it shall appear to the court or judge that the delay necessary to give notice would cause a material depreciation in the value of property, the order may be made without notice.

History: En. Sec. 905, C. Civ. Proc. 1895; re-en. Sec. 6672, Rev. C. 1907; re-en. Sec. 9272, R.C.M. 1921; re-en. Sec. 9272, R.C.M. 1935; R.C.M. 1947, 93-4319.

27-18-804. Sale of property subject to a security interest — disposition of proceeds, security agreement. (1) When the property taken under 27-18-413 is sold under process, the officer levying the writ must apply the proceeds of the sale as follows:

(a) to the repayment of the sum paid to the secured party, with interest from the date of such payment; and

(b) the balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.

(2) In the event the property is sold under attachment, such attaching creditor shall be required to deliver to the debtor the security agreement and any note or other evidence of indebtedness secured thereby obtained from the secured party when the property is sold for the amount of the indebtedness under the security agreement or an amount in excess thereof.

History: En. Sec. 1, Ch. 111, L. 1921; re-en. Sec. 9291, R.C.M. 1921; re-en. Sec. 9291, R.C.M. 1935; amd. Sec. 11-162, Ch. 264, L. 1963; R.C.M. 1947, 93-4338(part).

Cross-References

Uniform Commercial Code — secured transactions, Title 30, ch. 9.

Part 9

Judgment and Subsequent Procedure

27-18-901. Judgment when debt not yet due. (1) On the trial of any cause brought under the provisions of 27-18-203, judgment may be rendered on any such debt not due upon satisfactory proof to the court of the facts alleged in the affidavit for attachment, as provided in that section. Any such judgment shall be with a rebatement of the interest from the time said judgment is rendered until the time at which said debt shall have become due.

(2) The defendant may, by plea, put in issue the matter alleged in the affidavit required in 27-18-203, and if the plaintiff fails to substantiate some one of the causes required to be alleged in said affidavit, the suit for debt or debts not due shall abate.

History: En. Sec. 1, p. 141, L. 1899; re-en. Sec. 6658, Rev. C. 1907; amd. Sec. 1, Ch. 14, L. 1911; re-en. Sec. 9258, R.C.M. 1921; re-en. Sec. 9258, R.C.M. 1935; R.C.M. 1947, 93-4303(part).

Cross-References

Demurrers, pleas, etc., abolished, Rule 7(c), M.R.Civ.P. (see Title 25, ch. 20).

27-18-902. Procedure when defendant recovers judgment. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all of the proceeds of sales and money collected by the sheriff, and all the property attached remaining in the sheriff's hands must be delivered to the defendant or his agent; the order of attachment shall be discharged and the property released therefrom.

History: En. Sec. 106, p. 64, Bannack Stat.; re-en. Sec. 135, p. 159, L. 1867; re-en. Sec. 153, p. 58, Cod. Stat. 1871; re-en. Sec. 195, p. 88, L. 1877; re-en. Sec. 195, 1st Div. Rev. Stat. 1879; re-en. Sec. 197, 1st Div. Comp. Stat. 1887; re-en. Sec. 911, C. Civ. Proc. 1895; re-en. Sec. 6678, Rev. C. 1907; re-en. Sec. 9279, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 553; re-en. Sec. 9279, R.C.M. 1935; R.C.M. 1947, 93-4326.

27-18-903. Judgment for plaintiff — disposition of attached property and proceeds of sales. If judgment be recovered by plaintiff, the sheriff must satisfy the same out of the property attached by him which has not been delivered to the defendant or claimant, as hereinbefore provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose:

(1) by paying to the plaintiff the proceeds of all sales of perishable property or property ordered by the court or judge to be sold by him, or of any debts or credits collected by him, or so much thereof as shall be necessary to satisfy the judgment;

(2) if any balance remain due and an execution shall have been issued on the judgment, by selling under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notices of the sales must be given and the sales conducted as in other cases of sales on execution.

History: En. Sec. 103, p. 64, Bannack Stat.; re-en. Sec. 132, p. 159, L. 1867; re-en. Sec. 150, p. 58, Cod. Stat. 1871; re-en. Sec. 192, p. 87, L. 1877; re-en. Sec. 192, 1st Div. Rev. Stat. 1879; re-en. Sec. 194, 1st Div. Comp. Stat. 1887; re-en. Sec. 908, C. Civ. Proc. 1895; re-en. Sec. 6675, Rev. C. 1907; re-en. Sec. 9276, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 550; re-en. Sec. 9276, R.C.M. 1935; R.C.M. 1947, 93-4323.

27-18-904. Delivery of excess property and proceeds to defendant. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, must deliver over to the defendant the attached property remaining in his hands and any proceeds of property attached unapplied on the judgment.

History: En. Sec. 104, p. 64, Bannack Stat.; re-en. Sec. 133, p. 159, L. 1867; re-en. Sec. 151, p. 58, Cod. Stat. 1871; re-en. Sec. 193, p. 87, L. 1877; re-en. Sec. 193, 1st Div. Rev. Stat. 1879;

re-en. Sec. 195, 1st Div. Comp. Stat. 1887; re-en. Sec. 909, C. Civ. Proc. 1895; re-en. Sec. 6676, Rev. C. 1907; re-en. Sec. 9277, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 551; re-en. Sec. 9277, R.C.M. 1935; R.C.M. 1947, 93-4324(part).

27-18-905. Execution of balance due on judgment. If, after selling all property attached by him remaining in his hands and applying the proceeds, together with the proceeds of any debt or credit collected by him, deducting his fee, to the payment of the judgment, any balance shall remain due, the sheriff must proceed to collect such balance as upon an execution in other cases.

History: En. Sec. 104, p. 64, Bannack Stat.; re-en. Sec. 133, p. 159, L. 1867; re-en. Sec. 151, p. 58, Cod. Stat. 1871; re-en. Sec. 193, p. 87, L. 1877; re-en. Sec. 193, 1st Div. Rev. Stat. 1879; re-en. Sec. 195, 1st Div. Comp. Stat. 1887; re-en. Sec. 909, C. Civ. Proc. 1895; re-en. Sec. 6676, Rev. C. 1907; re-en. Sec. 9277, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 551; re-en. Sec. 9277, R.C.M. 1935; R.C.M. 1947, 93-4324(part).

27-18-906. Procedure when execution returned unsatisfied. If the execution is returned unsatisfied, in whole or in part, the plaintiff may prosecute any undertaking given pursuant to 27-18-301 or 27-18-722 or he may proceed, as in other cases, upon the return of an execution.

History: En. Sec. 105, p. 64, Bannack Stat.; re-en. Sec. 134, p. 159, L. 1867; re-en. Sec. 152, p. 58, Cod. Stat. 1871; re-en. Sec. 194, p. 88, L. 1877; re-en. Sec. 194, 1st Div. Rev. Stat. 1879; re-en. Sec. 196, 1st Div. Comp. Stat. 1887; re-en. Sec. 910, C. Civ. Proc. 1895; re-en. Sec. 6677, Rev. C. 1907; re-en. Sec. 9278, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 552; re-en. Sec. 9278, R.C.M. 1935; R.C.M. 1947, 93-4325.

Parts 10 through 14 reserved

Part 15

Attachment in Justice's Court

27-18-1501. Justice's authority to issue writ. A writ to attach the property of the defendant may be issued by the justice at the time of or after issuing summons and before answer, on receiving an affidavit by or on behalf of the plaintiff, showing the same facts as are required to be shown by the affidavit specified in 27-18-202.

History: En. Sec. 568, p. 155, Bannack Stat.; re-en. Sec. 674, p. 172, Cod. Stat. 1871; re-en. Sec. 734, 1st Div. Rev. Stat. 1879; re-en. Sec. 754, 1st Div. Comp. Stat. 1887; amd. Sec. 1560, C. Civ. Proc. 1895; re-en. Sec. 7026, Rev. C. 1907; re-en. Sec. 9659, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 866; re-en. Sec. 9659, R.C.M. 1935; amd. Sec. 6, Ch. 299, L. 1977; R.C.M. 1947, 93-6908.

27-18-1502. Plaintiff's undertaking. Before issuing the writ, the justice must require a written undertaking in due form on the part of the plaintiff, with two or more sureties, in a sum of not less than $50 or more than $300, to the effect that if defendant recover judgment, the plaintiff will pay all costs that may be awarded to defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

History: En. Sec. 569, p. 155, Bannack Stat.; re-en. Sec. 675, p. 172, Cod. Stat. 1871; re-en. Sec. 735, 1st Div. Rev. Stat. 1879; re-en. Sec. 755, 1st Div. Comp. Stat. 1887; amd. Sec. 1561, C. Civ. Proc. 1895; re-en. Sec. 7027, Rev. C. 1907; amd. Sec. 1, Ch. 86, L. 1911; re-en. Sec. 9660,

R.C.M. 1921; Cal. C. Civ. Proc. Sec. 867; re-en. Sec. 9660, R.C.M. 1935; R.C.M. 1947, 93-6909(part).

27-18-1503. Exception to sureties — justification. Within 2 days after or at any time before the service of the writ of attachment upon defendant, he may except to the sufficiency of the sureties, and if he fails to do so, he is deemed to have waived all objections to them. When excepted to, the sureties must, within 3 days after notice by the defendant of not less than 1 day, justify before the justice, and upon failure to justify or if others in their place fail to justify at the time and place appointed, the justice shall make an order vacating the writ of attachment.

History: En. Sec. 569, p. 155, Bannack Stat.; re-en. Sec. 675, p. 172, Cod. Stat. 1871; re-en. Sec. 735, 1st Div. Rev. Stat. 1879; re-en. Sec. 755, 1st Div. Comp. Stat. 1887; amd. Sec. 1561, C. Civ. Proc. 1895; re-en. Sec. 7027, Rev. C. 1907; amd. Sec. 1, Ch. 86, L. 1911; re-en. Sec. 9660, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 867; re-en. Sec. 9660, R.C.M. 1935; R.C.M. 1947, 93-6909(part).

27-18-1504. Form and content of writ — defendant's undertaking to prevent levy. (1) The writ may be directed to the sheriff or any constable of the county or the sheriff of any other county and must require him to:

(a) attach and safely keep all the property of the defendant in his county, not exempt from attachment, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint; or

(b) if the defendant gives him security by the undertaking of two sufficient sureties in an amount sufficient to satisfy such demand, besides costs, take such undertaking.

(2) The undertaking must be to the plaintiff and must be approved in writing on the back thereof by the plaintiff or his attorney or, upon their refusal, by the justice issuing the writ.

History: En. Sec. 570, p. 155, Bannack Stat.; re-en. Sec. 676, p. 172, Cod. Stat. 1871; re-en. Sec. 736, 1st Div. Rev. Stat. 1879; re-en. Sec. 756, 1st Div. Comp. Stat. 1887; re-en. Sec. 1562, C. Civ. Proc. 1895; amd. Sec. 2, p. 141, L. 1899; re-en. Sec. 7028, Rev. C. 1907; re-en. Sec. 9661, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 868; re-en. Sec. 9661, R.C.M. 1935; R.C.M. 1947, 93-6910; amd. Sec. 44, Ch. 12, L. 1979.

27-18-1505. Security for sheriff's costs. If the sheriff will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of a writ of attachment shall provide a bond or other security to pay for all costs which may be incurred as a result of the service of such writ.

History: En. Sec. 4393, Pol. C. 1895; re-en. Sec. 3022, Rev. C. 1907; re-en. Sec. 4786, R.C.M. 1921; Cal. Pol. C. Sec. 4185; re-en. Sec. 4786, R.C.M. 1935; amd. Sec. 1, Ch. 426, L. 1977; R.C.M. 1947, 16-2714(part).

27-18-1506. Applicability of procedure in district court. Part 1; 27-18-207, 27-18-303 through 27-18-308; parts 4, 5, and 6; 27-18-711 through 27-18-713, 27-18-721 through 27-18-732; and parts 8 and 9, except 27-18-901, are applicable to attachments issued in justices' courts, the word "constable" being substituted for the word "sheriff" whenever the writ is directed to a constable, and the word "justice" substituted for "judge".

History: En. Sec. 571, p. 155, Bannack Stat.; re-en. Sec. 677, p. 172, Cod. Stat. 1871; re-en. Sec. 737, 1st Div. Rev. Stat. 1879; re-en. Sec. 757, 1st Div. Comp. Stat. 1887; re-en. Sec. 1563,

C. Civ. Proc. 1895; re-en. Sec. 7029, Rev. C. 1907; re-en. Sec. 9662, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 869; re-en. Sec. 9662, R.C.M. 1935; R.C.M. 1947, 93-6911; amd. Sec. 45, Ch. 12, L. 1979.

CHAPTER 19

INJUNCTIONS

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Chapter Cross-References

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20).

Injunctive relief against unlawful termination or substantial alteration of farm implements dealership agreements, Title 30, ch. 11, part 8.

Part 1

General Provisions

27-19-101. Definition of injunction — by whom granted. An injunction is an order requiring a person to refrain from a particular act. The order may be granted by the court in which the action is brought or by a judge thereof and, when made by a judge, be enforced as the order of the court.

History: En. Sec. 82, p. 58, Bannack Stat.; amd. Sec. 111, p. 154, L. 1867; re-en. Sec. 128, p. 52, Cod. Stat. 1871; re-en. Sec. 170, p. 79, L. 1877; re-en. Sec. 170, 1st Div. Rev. Stat. 1879; re-en. Sec. 172, 1st Div. Comp. Stat. 1887; amd. Sec. 870, C. Civ. Proc. 1895; re-en. Sec. 6642, Rev. C. 1907; re-en. Sec. 9240, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 525; re-en. Sec. 9240, R.C.M. 1935; R.C.M. 1947, 93-4201.

27-19-102. When final injunction may be granted to prevent breach of obligation. Except where otherwise provided by the provisions of the code governing specific and preventive relief (chapter 1, part 4, of this title and Title 28, chapter 2, parts 16 and 17), a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant where:

(1) pecuniary compensation would not afford adequate relief;

(2) it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief;

(3) the restraint is necessary to prevent a multiplicity of judicial proceedings; or

(4) the obligation arises from a trust.

History: En. Sec. 4462, Civ. C. 1895; re-en. Sec. 6120, Rev. C. 1907; re-en. Sec. 9241, R.C.M. 1921; Cal. Civ. C. Sec. 3422; Field Civ. C. Sec. 1911; re-en. Sec. 9241, R.C.M. 1935; R.C.M. 1947, 93-4202.

27-19-103. When injunction may not be granted. An injunction cannot be granted:

(1) to stay a judicial proceeding pending at the commencement of an action in which the injunction is demanded, unless such restraint is necessary to prevent a multiplicity of such proceedings;

(2) to stay proceedings in a court of the United States;

(3) to stay proceedings in another state upon a judgment of a court of that state;

(4) to prevent the execution of a public statute by officers of the law for the public benefit;

(5) to prevent the breach of a contract the performance of which would not be specifically enforced;

(6) to prevent the exercise of a public or private office, in a lawful manner, by the person in possession;

(7) to prevent a legislative act by a municipal corporation;

(8) in labor disputes under any other or different circumstances or conditions than if the controversy were of another or different character or between parties neither or none of whom were laborers or interested in labor questions.

History: En. Sec. 4463, Civ. C. 1895; re-en. Sec. 6121, Rev. C. 1907; amd. Sec. 1, Ch. 28, L. 1913; re-en. Sec. 9242, R.C.M. 1921; Cal. Civ. C. Sec. 3423; Based on Field Civ. C. Sec. 1912; re-en. Sec. 9242, R.C.M. 1935; R.C.M. 1947, 93-4203.

27-19-104. Contents of complaint — action for injunction by an association. Whenever an action for injunctive relief is initiated by a citizens' group or other public interest association and it appears by the complaint that there is an injury to a property or civil right of individual members of the association, which injury is distinguishable from an injury to the public generally, the names and addresses of injured members and a statement of the injury shall be provided in the complaint. An injunction may not be granted unless such information is provided in the complaint.

History: **En. 93-4204.1 by Sec. 1, Ch. 170, L. 1977; R.C.M. 1947, 93-4204.1.**

27-19-105. Form and scope of injunction or restraining order. An order granting an injunction or a restraining order shall:

(1) set forth the reasons for its issuance;

(2) be specific in its terms;

(3) describe in reasonable detail, and not by reference to the complaint or any other document, the act or acts sought to be restrained; and

(4) be binding only upon the parties to the action; their officers, agents, employees, and attorneys; and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

History: **En. Sec. 6, Ch. 399, L. 1979.**

Part 2

Availability of Preliminary Injunction

27-19-201. When preliminary injunction may be granted. An injunction order may be granted in the following cases:

(1) when it shall appear that the applicant is entitled to the relief demanded and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;

(2) when it shall appear that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant;

(3) when it shall appear during the litigation that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;

(4) when it appears that the adverse party, during the pendency of the action, threatens or is about to remove or to dispose of his property with intent to defraud the applicant, an injunction order may be granted to restrain the removal or disposition;

(5) when it appears the applicant has suffered or may suffer physical abuse under the provisions of 40-4-121.

History: **En. Sec. 83, p. 58, Bannack Stat.; re-en. Sec. 112, p. 154, L. 1867; re-en. Sec. 129, p. 52, Cod. Stat. 1871; re-en. Sec. 171, p. 79, L. 1877; re-en. Sec. 171, 1st Div. Rev. Stat. 1879; re-en. Sec. 173, 1st Div. Comp. Stat. 1887; amd. Sec. 871, C. Civ. Proc. 1895; re-en. Sec. 6643, Rev. C. 1907; re-en. Sec. 9243, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 526; re-en. Sec. 9243, R.C.M. 1935; R.C.M. 1947, 93-4204; amd. Sec. 1, Ch. 399, L. 1979; amd. Sec. 2, Ch. 180, L. 1981; amd. Sec. 1, Ch. 526, L. 1985.**

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Violation of protective order a misdemeanor, 45-5-626.

Montana Hazardous Waste Act — injunction for compliance with orders, permits, or rules, 75-10-414.

27-19-202. Preliminary injunction pending action for restraint of trade. Whenever any action, either civil or criminal, shall have been instituted in court in this state against any person for price fixing or regulating the production of any article of commerce or of the product of the soil, for consumption by the people, the court in which such action is pending is authorized to issue an injunction to restrain any such person from doing business in this state pending the final determination of said action so instituted.

History: En. Sec. 1, Ch. 93, L. 1905; re-en. Sec. 6654, Rev. C. 1907; re-en. Sec. 9254, R.C.M. 1921; re-en. Sec. 9254, R.C.M. 1935; amd. Sec. 56, Ch. 100, L. 1973; amd. Sec. 3, Ch. 138, L. 1975; R.C.M. 1947, 93-4215(1).

Cross-References

Unfair trade practices — injunction, 30-14-222.

27-19-203. Preliminary injunction pending action by public service commission. When the public service commission is conducting an adjudicatory proceeding or formal investigation relating to continuation or interruption of service upon the motion of the consumer counsel or the interested person or his legal representative, a district court may, upon the application of the consumer counsel or the interested person or his legal representative, enter a restraining order against any person respondent in the adjudicatory proceeding or investigation. Such a restraining order may prohibit the respondent and his agents, employees, licensees, and assignees from acting in the manner complained of in the proceeding before the commission until the commission has rendered its decision in the matter. The restraining order may include an order to show cause why the order should not become an injunction for the duration of the proceeding before the commission.

History: En. Sec. 1, Ch. 93, L. 1905; re-en. Sec. 6654, Rev. C. 1907; re-en. Sec. 9254, R.C.M. 1921; re-en. Sec. 9254, R.C.M. 1935; amd. Sec. 56, Ch. 100, L. 1973; amd. Sec. 3, Ch. 138, L. 1975; R.C.M. 1947, 93-4215(2).

27-19-204. Issuance without bond. The injunction provided for in 27-19-202 shall issue without bond, upon the application of the county attorney of the county in which the action is pending or upon the application of the attorney general in the name of the state of Montana, upon a prima facie showing that an action described in 27-19-202 has been instituted and is pending.

History: En. Sec. 2, Ch. 93, L. 1905; re-en. Sec. 6655, Rev. C. 1907; re-en. Sec. 9255, R.C.M. 1921; re-en. Sec. 9255, R.C.M. 1935; amd. Sec. 57, Ch. 100, L. 1973; R.C.M. 1947, 93-4216; amd. Sec. 46, Ch. 12, L. 1979.

Part 3

Procedure for Obtaining Preliminary Injunction

27-19-301. Notice of application — hearing. (1) No preliminary injunction may be issued without reasonable notice to the adverse party of the time and place of the making of the application therefor.

(2) Before granting an injunction order, the court or judge shall make an order requiring cause to be shown, at a specified time and place, why the injunction should not be granted, and the adverse party may in the meantime be restrained as provided in 27-19-314.

History: (1)En. Sec. 85, p. 59, Bannack Stat.; re-en. Sec. 114, p. 154, L. 1867; re-en. Sec. 131, p. 52, Cod. Stat. 1871; re-en. Sec. 173, p. 79, L. 1877; re-en. Sec. 173, 1st Div. Rev. Stat. 1879; re-en. Sec. 175, 1st Div. Comp. Stat. 1887; en. Sec. 873, C. Civ. Proc. 1895; re-en. Sec. 6645, Rev. C. 1907; re-en. Sec. 9245, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 528; re-en. Sec. 9245, R.C.M. 1935; R.C.M. 1947, 93-4206(part); (2)En. Sec. 3, Ch. 399, L. 1979; amd. Sec. 2, Ch. 399, L. 1979.

27-19-302. Repealed. Sec. 18, Ch. 399, L. 1979.

History: En. Sec. 88, p. 59, Bannack Stat.; amd. Sec. 117, p. 155, L. 1867; re-en. Sec. 134, p. 53, Cod. Stat. 1871; re-en. Sec. 176, p. 81, L. 1877; re-en. Sec. 176, 1st Div. Rev. Stat. 1879; re-en. Sec. 178, 1st Div. Comp. Stat. 1887; amd. Sec. 881, C. Civ. Proc. 1895; re-en. Sec. 6653, Rev. C. 1907; re-en. Sec. 9253, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 531; re-en. Sec. 9253, R.C.M. 1935; R.C.M. 1947, 93-4214.

27-19-303. Time of granting injunction, evidence required. (1) The injunction order may be granted after the hearing at any time before judgment.

(2) Upon the hearing each party may present affidavits or oral testimony. An injunction order may not be granted on affidavits unless:

(a) they are duly verified; and

(b) the material allegations of the affidavits setting forth the grounds for the order are made positively and not upon information and belief.

(3) Upon the hearing of a contested application for an injunction order, a verified answer has the effect only of an affidavit.

History: (1), (2)En. Sec. 84, p. 58, Bannack Stat.; re-en. Sec. 113, p. 154, L. 1867; re-en. Sec. 130, p. 52, Cod. Stat. 1871; re-en. Sec. 172, p. 79, L. 1877; re-en. Sec. 172, 1st Div. Rev. Stat. 1879; re-en. Sec. 174, 1st Div. Comp. Stat. 1887; amd. Sec. 872, C. Civ. Proc. 1895; re-en. Sec. 6644, Rev. C. 1907; re-en. Sec. 9244, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 527; re-en. Sec. 9244, R.C.M. 1935; Sec. 93-4205, R.C.M. 1947; (3)En. Sec. 877, C. Civ. Proc. 1895; re-en. Sec. 6649, Rev. C. 1907; re-en. Sec. 9249, R.C.M. 1921; re-en. Sec. 9249, R.C.M. 1935; Sec. 93-4210, R.C.M. 1947; R.C.M. 1947, 93-4205(part), 93-4210(part); amd. Sec. 47, Ch. 12, L. 1979; amd. Sec. 4, Ch. 399, L. 1979.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

27-19-304. Repealed. Sec. 18, Ch. 399, L. 1979.

History: En. Sec. 84, p. 58, Bannack Stat.; re-en. Sec. 113, p. 154, L. 1867; re-en. Sec. 130, p. 52, Cod. Stat. 1871; re-en. Sec. 172, p. 79, L. 1877; re-en. Sec. 172, 1st Div. Rev. Stat. 1879; re-en. Sec. 174, 1st Div. Comp. Stat. 1887; amd. Sec. 872, C. Civ. Proc. 1895; re-en. Sec. 6644, Rev. C. 1907; re-en. Sec. 9244, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 527; re-en. Sec. 9244, R.C.M. 1935; R.C.M. 1947, 93-4205(part).

27-19-305. Renumbered 27-19-314 by Code Commissioner, 1979.

27-19-306. Security for damages. (1) On granting an injunction or restraining order, the court or judge shall require a written undertaking to be given by the applicant, in such sum as the court considers proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. The undertaking may not be required in domestic disputes or when the state or a state agency, a county or subdivision thereof, or a municipal corporation is the party seeking the injunction or restraining order. In any case, the court in its discretion may waive the undertaking in the interest of justice.

(2) Within 5 days after the service of the injunction, the party enjoined may except to the sufficiency of the sureties. If he fails to do so, he waives all objections to them. When excepted to, the applicant's sureties, upon notice to the party enjoined of not less than 2 or more than 5 days, must justify before a judge or clerk in the same manner as upon bail on arrest. If they fail to justify or if others in their place fail to justify at the time and place appointed, the order granting the injunction must be dissolved.

History: **En. Sec. 86, p. 59, Bannack Stat.; re-en. Sec. 115, p. 154, L. 1867; re-en. Sec. 132, p. 52, Cod. Stat. 1871; re-en. Sec. 174, p. 79, L. 1877; re-en. Sec. 174, 1st Div. Rev. Stat. 1879; re-en. Sec. 176, 1st Div. Comp. Stat. 1887; en. Sec. 874, C. Civ. Proc. 1895; re-en. Sec. 6646, Rev. C. 1907; re-en. Sec. 9246, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 529; re-en. Sec. 9246, R.C.M. 1935; amd. Sec. 53, Ch. 535, L. 1975; R.C.M. 1947, 93-4207; amd. Sec. 48, Ch. 12, L. 1979; amd. Sec. 8, Ch. 399, L. 1979.**

Cross-References

Suretyship, Title 28, ch. 11, part 4.

27-19-307. New undertaking for security following hearing. On a hearing to show cause, the court or judge may require a new undertaking, in the same or a different sum, to be given by the party who obtained the order, with like sureties and to the like effect as upon granting of the original order. The persons executing the new undertaking become liable thereon as if they had executed it upon the granting of the original order. The persons who executed the original undertaking remain liable thereon until the new undertaking is given and approved, and no longer.

History: **En. Sec. 876, C. Civ. Proc. 1895; re-en. Sec. 6648, Rev. C. 1907; re-en. Sec. 9248, R.C.M. 1921; re-en. Sec. 9248, R.C.M. 1935; R.C.M. 1947, 93-4209(part); amd. Sec. 13, Ch. 399, L. 1979; MCA 1979, 27-19-313; redes. 27-19-307 by Code Commissioner, 1979.**

27-19-308 through 27-19-310 reserved.

27-19-311. Repealed. Sec. 18, Ch. 399, L. 1979.

History: **En. Sec. 87, p. 59, Bannack Stat.; re-en. Sec. 116, p. 155, L. 1867; re-en. Sec. 133, p. 52, Cod. Stat. 1871; re-en. Sec. 175, p. 81, L. 1877; re-en. Sec. 175, 1st Div. Rev. Stat. 1879; re-en. Sec. 177, 1st Div. Comp. Stat. 1887; amd. Sec. 875, C. Civ. Proc. 1895; re-en. Sec. 6647, Rev. C. 1907; re-en. Sec. 9247, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 530; re-en. Sec. 9247, R.C.M. 1935; R.C.M. 1947, 93-4208.**

27-19-312. Renumbered 27-19-303(3) by Code Commissioner, 1979.

27-19-313. Renumbered 27-19-307 by Code Commissioner, 1979.

27-19-314. Temporary restraining order. Where an application for an injunction is made upon notice or an order to show cause, either before or after answer, the court or judge may enjoin the adverse party, until the hearing and decision of the application, by an order which is called a temporary restraining order.

History: **En. Sec. 85, p. 59, Bannack Stat.; re-en. Sec. 114, p. 154, L. 1867; re-en. Sec. 131, p. 52, Cod. Stat. 1871; re-en. Sec. 173, p. 79, L. 1877; re-en. Sec. 173, 1st Div. Rev. Stat. 1879; re-en. Sec. 175, 1st Div. Comp. Stat. 1887; en. Sec. 873, C. Civ. Proc. 1895; re-en. Sec. 6645, Rev. C. 1907; re-en. Sec. 9245, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 528; re-en. Sec. 9245, R.C.M.**

1935; R.C.M. 1947, 93-4206(part); amd. Sec. 5, Ch. 399, L. 1979; Sec. 27-19-305, MCA 1979; redes. 27-19-314 by Code Commissioner, 1979.

27-19-315. When restraining order may be granted without notice. A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if:

(1) it clearly appears from specific facts shown by affidavit or by the verified complaint that a delay would cause immediate and irreparable injury to the applicant before the adverse party or his attorney could be heard in opposition; and

(2) the applicant or the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting his claim that notice should not be required.

History: En. Sec. 7, Ch. 399, L. 1979; amd. Sec. 2, Ch. 526, L. 1985.

Cross-References

Stay of government agency decision pending court review, 2-4-702.

Violation of protective order a misdemeanor, 45-5-626.

27-19-316. Contents and filing of restraining order granted without notice. Each temporary restraining order granted without notice must:

(1) be endorsed with the date and hour of its issuance;

(2) be filed immediately in the clerk's office and entered in the record;

(3) define the injury and state why such injury is irreparable and why the order was granted without notice; and

(4) except as provided in 40-4-121, expire by its terms within such time after entry, not to exceed 10 days, as the court or judge fixes.

History: En. Sec. 9, Ch. 399, L. 1979; amd. Sec. 3, Ch. 526, L. 1985.

Cross-References

Stay of government agency decision pending court review, 2-4-702.

27-19-317. Extension of expiration date. The time fixed in the order for its expiration may be extended, for good cause shown, for a like period or, if the party against whom the order is directed consents, for a longer period. The reasons for the extension must be entered in the record.

History: En. Sec. 10, Ch. 399, L. 1979.

Cross-References

Stay of government agency decision pending court review, 2-4-702.

27-19-318. Application for injunction to be heard without delay. Whenever a temporary restraining order is granted without notice, the application for an injunction must be set for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. At the hearing the party who obtained the temporary restraining order shall proceed with the application for an injunction, or if he does not do so, the court or judge shall dissolve the temporary restraining order.

History: En. Sec. 11, Ch. 399, L. 1979.

27-19-319. Motion to dissolve or modify restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice as the court or judge may prescribe, the adverse party may appear and move that the order be dissolved or modified. The court shall hear and determine such motion as expeditiously as the ends of justice require.

History: **En. Sec. 12, Ch. 399, L. 1979.**

Part 4

Dissolution or Modification of Preliminary Injunction

27-19-401. Application to dissolve or modify injunction. The party enjoined may apply to the judge who granted the injunction order or to the court in which the action is brought to dissolve or modify the same. The application may be made upon reasonable notice or upon an order to show cause returnable at a specified time or immediately after service thereof. The application must be supported by an affidavit showing that there is not sufficient ground for the injunction to continue or that the scope of the injunction is too broad.

History: **En. Sec. 89, p. 59, Bannack Stat.; re-en. Sec. 118, p. 155, L. 1867; re-en. Sec. 135, p. 53, Cod. Stat. 1871; re-en. Sec. 177, p. 81, L. 1877; re-en. Sec. 177, 1st Div. Rev. Stat. 1879; re-en. Sec. 179, 1st Div. Comp. Stat. 1887; amd. Sec. 878, C. Civ. Proc. 1895; re-en. Sec. 6650, Rev. C. 1907; re-en. Sec. 9250, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 532; re-en. Sec. 9250, R.C.M. 1935; R.C.M. 1947, 93-4211(part); amd. Sec. 14, Ch. 399, L. 1979.**

27-19-402. Repealed. Sec. 18, Ch. 399, L. 1979.

History: **Ap. p. Sec. 877, C. Civ. Proc. 1895; re-en. Sec. 6649, Rev. C. 1907; re-en. Sec. 9249, R.C.M. 1921; re-en. Sec. 9249, R.C.M. 1935; Sec. 93-4210, R.C.M. 1947; Ap. p. Sec. 89, p. 59, Bannack Stat.; re-en. Sec. 118, p. 155, L. 1867; re-en. Sec. 135, p. 53, Cod. Stat. 1871; re-en. Sec. 177, p. 81, L. 1877; re-en. Sec. 177, 1st Div. Rev. Stat. 1879; re-en. Sec. 179, 1st Div. Comp. Stat. 1887; amd. Sec. 878, C. Civ. Proc. 1895; re-en. Sec. 6650, Rev. C. 1907; re-en. Sec. 9250, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 532; re-en. Sec. 9250, R.C.M. 1935; Sec. 93-4211, R.C.M. 1947; R.C.M. 1947, 93-4210(part), 93-4211(part); amd. Sec. 49, Ch. 12, L. 1979.**

27-19-403. New undertaking for security following hearing. Upon the hearing, the court or judge may require a new undertaking, in the same or a different sum, to be given by the party who obtained the order, with like sureties and to the like effect as the undertaking executed upon the granting of the original order. The persons executing the new undertaking become liable thereon as if they had executed it upon the granting of the original order. The persons who executed the original undertaking remain liable thereon until the new undertaking is given and approved, and no longer.

History: **En. Sec. 876, C. Civ. Proc. 1895; re-en. Sec. 6648, Rev. C. 1907; re-en. Sec. 9248, R.C.M. 1921; re-en. Sec. 9248, R.C.M. 1935; R.C.M. 1947, 93-4209(part); amd. Sec. 50, Ch. 12, L. 1979; amd. Sec. 15, Ch. 399, L. 1979.**

27-19-404. When injunction dissolved or modified. If upon the hearing it satisfactorily appears that there are not sufficient grounds for the injunction order, the order must be dissolved; or if it satisfactorily appears that the extent of the injunction order is too great, the order must be modified.

History: **Ap. p. Sec. 90, p. 60, Bannack Stat.; re-en. Sec. 119, p. 155, L. 1867; re-en. Sec. 136, p. 53, Cod. Stat. 1871; re-en. Sec. 178, p. 81, L. 1877; re-en. Sec. 178, 1st Div. Rev. Stat. 1879; re-en. Sec. 180, 1st Div. Comp. Stat. 1887; re-en. Sec. 879, C. Civ. Proc. 1895; re-en. Sec. 6651,**

Rev. C. 1907; re-en. Sec. 9251, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 533; re-en. Sec. 9251, R.C.M. 1935; Sec. 93-4212, R.C.M. 1947; Ap. p. Sec. 876, C. Civ. Proc. 1895; re-en. Sec. 6648, Rev. C. 1907; re-en. Sec. 9248, R.C.M. 1921; re-en. Sec. 9248, R.C.M. 1935; R.C.M. 1947, 93-4209(part), 93-4212; amd. Sec. 51, Ch. 12, L. 1979.

27-19-405. Enjoined party's undertaking for security upon dissolution. If the injunction order is dissolved because the alleged injury is not irreparable and is capable of being adequately compensated for in money, the court or judge shall require the enjoined party to execute an undertaking in such form and amount and with such sureties as the court or judge may direct, conditioned to indemnify the party who obtained the injunction order against loss sustained by reason of the dissolution.

History: En. Sec. 876, C. Civ. Proc. 1895; re-en. Sec. 6648, Rev. C. 1907; re-en. Sec. 9248, R.C.M. 1921; re-en. Sec. 9248, R.C.M. 1935; R.C.M. 1947, 93-4209(part); amd. Sec. 52, Ch. 12, L. 1979; amd. Sec. 16, Ch. 399, L. 1979.

27-19-406. Costs upon dissolution. Where an injunction order is granted and the same is afterward dissolved upon application of the party enjoined thereby, the court or judge to whom the application to dissolve is made may award as costs of the application, against the party who obtained the injunction and in favor of the party applying, such sum as to the court or judge may appear just, not less than $10 or more than $100.

History: En. Sec. 880, C. Civ. Proc. 1895; re-en. Sec. 6652, Rev. C. 1907; re-en. Sec. 9252, R.C.M. 1921; re-en. Sec. 9252, R.C.M. 1935; R.C.M. 1947, 93-4213; amd. Sec. 17, Ch. 399, L. 1979.

Cross-References

When costs allowed, of course, to plaintiff, 25-10-101.

CHAPTER 20

RECEIVERS

Part 1 — General Provisions

27-20-101. Definition of property.
27-20-102. When and by whom receiver appointed.
27-20-103. Appointment of receiver upon dissolution of corporation.

Part 2 — Appointment Procedure

27-20-201. Notice of application for appointment before judgment.
27-20-202. Interested persons not to be appointed without consent.
27-20-203. Security to cover damages caused by appointment upon ex parte application.

Part 3 — Action by Receivers—Removal

27-20-301. Oath and undertaking to faithfully discharge duties.
27-20-302. Powers of receiver.
27-20-303. Investment of funds.
27-20-304. Removal of receiver.

Chapter Cross-References

Proceedings in aid of execution — appointment of a receiver, Title 25, ch. 14, part 2.

Part 1

General Provisions

27-20-101. Definition of property. The word "property", used in this chapter, includes the rents, profits, or other income and the increase of real or personal property.

History: En. Sec. 951, C. Civ. Proc. 1895; re-en. Sec. 6699, Rev. C. 1907; re-en. Sec. 9302, R.C.M. 1921; re-en. Sec. 9302, R.C.M. 1935; R.C.M. 1947, 93-4402(part).

27-20-102. When and by whom receiver appointed. A receiver may be appointed by the court in which an action is pending or by the judge thereof:

(1) in an action by a vendor to vacate a fraudulent purchase of property, by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff or of any party whose right to or interest in the property or fund or the proceeds thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured;

(2) in an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured or that the condition of the mortgage has not been performed and the property is probably insufficient to discharge the mortgage debt;

(3) after judgment, to carry the judgment into effect;

(4) after judgment, to dispose of the property according to the judgment or to preserve it during the pendency of an appeal; or in proceedings in aid of execution, when an execution has been returned unsatisfied or when the judgment debtor refuses to apply his property in satisfaction of the judgment;

(5) in all other cases where, before February 1, 1864, receivers have been appointed by the usages of courts of equity.

History: En. Sec. 116, p. 67, Bannack Stat.; re-en. Sec. 143, p. 160, L. 1867; re-en. Sec. 179, p. 62, Cod. Stat. 1871; en. Sec. 221, p. 93, L. 1877; re-en. Sec. 221, 1st Div. Rev. Stat. 1879; re-en. Sec. 229, 1st Div. Comp. Stat. 1887; re-en. Sec. 950, C. Civ. Proc. 1895; re-en. Sec. 6698, Rev. C. 1907; re-en. Sec. 9301, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 564; re-en. Sec. 9301, R.C.M. 1935; amd. Sec. 142, Ch. 300, L. 1967; R.C.M. 1947, 93-4401.

Cross-References

Proceedings in foreclosure suits, 71-1-222.

27-20-103. Appointment of receiver upon dissolution of corporation. Upon the dissolution of any corporation, the district court of the county in which the corporation carries on its business or has its principal place of business, on application of any creditor of the corporation or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, to collect the debts and property due and belonging to the corporation, to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over among the stockholders or members.

History: En. Sec. 222, p. 94, L. 1877; re-en. Sec. 222, 1st Div. Rev. Stat. 1879; re-en. Sec. 230, 1st Div. Comp. Stat. 1887; re-en. Sec. 952, C. Civ. Proc. 1895; re-en. Sec. 6700, Rev. C. 1907; re-en. Sec. 9303, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 565; re-en. Sec. 9303, R.C.M. 1935; R.C.M. 1947, 93-4403.

Cross-References
Dissolution and liquidation, Title 35, ch. 1, part 9.

Part 2

Appointment Procedure

27-20-201. Notice of application for appointment before judgment. Notice of an application for the appointment of a receiver in an action before judgment therein must be given to the adverse party unless he has failed to appear in the action and the time limited for his appearance has expired or unless it shall appear to the court that there is immediate danger that the property or fund will be removed beyond the jurisdiction of the court or lost, materially injured, destroyed, or unlawfully disposed of.

History: En. Sec. 951, C. Civ. Proc. 1895; re-en. Sec. 6699, Rev. C. 1907; re-en. Sec. 9302, R.C.M. 1921; re-en. Sec. 9302, R.C.M. 1935; R.C.M. 1947, 93-4402(part).

27-20-202. Interested persons not to be appointed without consent. No party, attorney, or person interested in an action can be appointed receiver therein without the written consent of the parties, filed with the clerk.

History: En. Sec. 223, p. 94, L. 1877; re-en. Sec. 223, 1st Div. Rev. Stat. 1879; re-en. Sec. 231, 1st Div. Comp. Stat. 1887; re-en. Sec. 953, C. Civ. Proc. 1895; re-en. Sec. 6701, Rev. C. 1907; re-en. Sec. 9304, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 566; re-en. Sec. 9304, R.C.M. 1935; R.C.M. 1947, 93-4404(part).

27-20-203. Security to cover damages caused by appointment upon ex parte application. If a receiver be appointed upon an ex parte application, the court, before making the order, may require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of such receiver and the entry by him upon his duties, in case the applicant shall have procured such appointment wrongfully, maliciously, or without sufficient cause; and the court may, in its discretion, at any time after said appointment, require an additional undertaking.

History: En. Sec. 223, p. 94, L. 1877; re-en. Sec. 223, 1st Div. Rev. Stat. 1879; re-en. Sec. 231, 1st Div. Comp. Stat. 1887; re-en. Sec. 953, C. Civ. Proc. 1895; re-en. Sec. 6701, Rev. C. 1907; re-en. Sec. 9304, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 566; re-en. Sec. 9304, R.C.M. 1935; R.C.M. 1947, 93-4404(part).

Cross-References
Suretyship, Title 28, ch. 11, part 4.

Part 3

Action by Receivers — Removal

27-20-301. Oath and undertaking to faithfully discharge duties. Before entering upon his duties, the receiver must be sworn to perform them faithfully and shall execute an undertaking, with one or more sureties approved by the court or judge, to such person and in such sum as the court or judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action and obey the orders of the court therein. The court may at any time direct him to give new bonds with new sureties with the like effect.

History: En. Sec. 224, p. 94, L. 1877; re-en. Sec. 224, 1st Div. Rev. Stat. 1879; re-en. Sec. 232, 1st Div. Comp. Stat. 1887; re-en. Sec. 954, C. Civ. Proc. 1895; re-en. Sec. 6702, Rev. C. 1907; re-en. Sec. 9305, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 567; re-en. Sec. 9305, R.C.M. 1935; R.C.M. 1947, 93-4405(part); amd. Sec. 53, Ch. 12, L. 1979.

Cross-References

Appointment of a receiver — oath and undertaking, 25-14-202.

27-20-302. Powers of receiver. The receiver has, under the control of the court, power to:

(1) bring and defend actions in his own name, as receiver;

(2) take and keep possession of the property;

(3) receive rents, collect debts, and compound for and compromise the same;

(4) make transfers; and

(5) generally do such acts respecting the property as the court may authorize.

History: En. Sec. 225, p. 94, L. 1877; re-en. Sec. 225, 1st Div. Rev. Stat. 1879; re-en. Sec. 233, 1st Div. Comp. Stat. 1887; re-en. Sec. 955, C. Civ. Proc. 1895; re-en. Sec. 6703, Rev. C. 1907; re-en. Sec. 9306, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 568; re-en. Sec. 9306, R.C.M. 1935; R.C.M. 1947, 93-4406.

Cross-References

Powers of receiver, 30-14-132.

Procedure in liquidation of corporation by court, 35-1-922.

Nonprofit corporations — liquidation by court — receiver, 35-2-712.

27-20-303. Investment of funds. Funds in the hands of a receiver may be invested upon interest, by order of the court, but no such order can be made except upon the consent of all the parties to the action.

History: En. Sec. 226, p. 94, L. 1877; re-en. Sec. 226, 1st Div. Rev. Stat. 1879; re-en. Sec. 234, 1st Div. Comp. Stat. 1887; re-en. Sec. 956, C. Civ. Proc. 1895; re-en. Sec. 6704, Rev. C. 1907; re-en. Sec. 9307, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 569; re-en. Sec. 9307, R.C.M. 1935; R.C.M. 1947, 93-4407.

27-20-304. Removal of receiver. The court may at any time remove a receiver.

History: En. Sec. 224, p. 94, L. 1877; re-en. Sec. 224, 1st Div. Rev. Stat. 1879; re-en. Sec. 232, 1st Div. Comp. Stat. 1887; re-en. Sec. 954, C. Civ. Proc. 1895; re-en. Sec. 6702, Rev. C. 1907; re-en. Sec. 9305, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 567; re-en. Sec. 9305, R.C.M. 1935; R.C.M. 1947, 93-4405(part).

CHAPTERS 21 THROUGH 24

RESERVED

CHAPTER 25

CERTIORARI — WRIT OF REVIEW

Part 1 — General Provisions

27-25-101. Name of writ.
27-25-102. When and by whom granted.
27-25-103. Application of rules of procedure.

Part 2 — Procedure for Obtaining and Serving Writ

27-25-201. Application for writ — notice.
27-25-202. Contents of writ.
27-25-203. Stay of proceedings.
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27-25-205. To whom writ directed — return.

Part 3 — Procedure Upon Return of Writ

27-25-301. Time for return and hearing.
27-25-302. Correction of defective return.
27-25-303. Scope of review upon writ.
27-25-304. Hearing and judgment.
27-25-305. Copy of judgment to inferior tribunal or officer.

Part 1

General Provisions

27-25-101. Name of writ. The writ of certiorari may be denominated the writ of review.

History: En. Sec. 371, p. 121, Bannack Stat.; re-en. Sec. 430, p. 222, L. 1867; re-en. Sec. 506, p. 139, Cod. Stat. 1871; re-en. Sec. 536, p. 179, L. 1877; re-en. Sec. 536, 1st Div. Rev. Stat. 1879; re-en. Sec. 554, 1st Div. Comp. Stat. 1887; re-en. Sec. 1940, C. Civ. Proc. 1895; re-en. Sec. 7202, Rev. C. 1907; re-en. Sec. 9836, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1067; re-en. Sec. 9836, R.C.M. 1935; R.C.M. 1947, 93-9001.

Cross-References

Application of Montana Rules of Civil Procedure to this chapter, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

27-25-102. When and by whom granted. A writ of review may be granted by:

(1) the supreme court and any justice of the supreme court, in proceedings for contempt in the district court; or

(2) the supreme court or the district court or any judge thereof, when an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction of such tribunal, board, or officer and there is no appeal or, in the judgment of the court, any plain, speedy, and adequate remedy.

History: En. Sec. 372, p. 121, Bannack Stat.; re-en. Sec. 431, p. 222, L. 1867; re-en. Sec. 507, p. 139, Cod. Stat. 1871; re-en. Sec. 537, p. 180, L. 1877; re-en. Sec. 537, 1st Div. Rev. Stat. 1879; re-en. Sec. 555, 1st Div. Comp. Stat. 1887; re-en. Sec. 1941, C. Civ. Proc. 1895; re-en. as amd. Sec. 7203, Rev. C. 1907; re-en. Sec. 9837, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1068; re-en. Sec. 9837, R.C.M. 1935; R.C.M. 1947, 93-9002.

Cross-References

Judgment and orders in contempt cases final, 3-1-523.

Powers of Justices individually — certiorari, 3-2-212.

Original jurisdiction — District Court, 3-5-302.

Powers of Judges at chambers, 3-5-311.

27-25-103. Application of rules of procedure. Except as otherwise provided in this chapter, the provisions of Title 25 are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter. The provisions of Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in this chapter.

History: Ap. p. Sec. 2000, C. Civ. Proc. 1895; re-en. Sec. 7232, Rev. C. 1907; re-en. Sec. 9866, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1109; re-en. Sec. 9866, R.C.M. 1935; Sec. 93-3902, R.C.M. 1947; Ap. p. Sec. 2001, C. Civ. Proc. 1895; re-en. Sec. 7233, Rev. C. 1907; re-en. Sec. 9867, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1110; re-en. Sec. 9867, R.C.M. 1935; Sec. 93-9303, R.C.M. 1947; R.C.M. 1947, 93-9302(part), 93-9303(part); amd. Sec. 54, Ch. 12, L. 1979.

Cross-References

New trial, Title 25, ch. 11.

Appeal to Supreme Court, Title 25, ch. 12.

New trials — amendment of judgment, Rule 59, M.R.Civ.P. (see Title 25, ch. 20).

Appeal from a District Court to the Supreme Court, Rule 72, M.R.Civ.P. (see Title 25, ch. 20).

Rules of Appellate Procedure, Title 25, ch. 21.

Part 2

Procedure for Obtaining and Serving Writ

27-25-201. Application for writ — notice. The application must be made on affidavit by the party beneficially interested; and the court may require a notice of the application to be given to the adverse party, grant an order to show cause why it should not be allowed, or grant the writ without notice.

History: En. Sec. 373, p. 121, Bannack Stat.; re-en. Sec. 432, p. 222, L. 1867; re-en. Sec. 508, p. 139, Cod. Stat. 1871; re-en. Sec. 538, p. 180, L. 1877; re-en. Sec. 538, 1st Div. Rev. Stat. 1879; re-en. Sec. 556, 1st Div. Comp. Stat. 1887; re-en. Sec. 1942, C. Civ. Proc. 1895; re-en. Sec. 7204, Rev. C. 1907; re-en. Sec. 9838, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1069; re-en. Sec. 9838, R.C.M. 1935; R.C.M. 1947, 93-9003.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

27-25-202. Contents of writ. The writ of review must command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, a transcript of the record and proceedings (describing or referring to them with convenient certainty), that the same may be reviewed by the court, and require the party, in the meantime, to desist from further proceedings in the matter to be reviewed.

History: En. Sec. 375, p. 121, Bannack Stat.; re-en. Sec. 434, p. 222, L. 1867; re-en. Sec. 510, p. 139, Cod. Stat. 1871; re-en. Sec. 540, p. 180, L. 1877; re-en. Sec. 540, 1st Div. Rev. Stat. 1879; re-en. Sec. 558, 1st Div. Comp. Stat. 1887; re-en. Sec. 1944, C. Civ. Proc. 1895; re-en. Sec. 7206, Rev. C. 1907; re-en. Sec. 9840, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1071; re-en. Sec. 9840, R.C.M. 1935; R.C.M. 1947, 93-9005.

27-25-203. Stay of proceedings. If a stay of proceedings be not intended, the words requiring the stay must be omitted from the writ. These words may be inserted or omitted, in the sound discretion of the court or judge; but if omitted, the power of the inferior tribunal, board, or officer is not suspended or the proceedings stayed.

History: En. Sec. 376, p. 122, Bannack Stat.; re-en. Sec. 435, p. 223, L. 1867; re-en. Sec. 511, p. 140, Cod. Stat. 1871; re-en. Sec. 541, p. 180, L. 1877; re-en. Sec. 541, 1st Div. Rev. Stat. 1879; re-en. Sec. 559, 1st Div. Comp. Stat. 1887; re-en. Sec. 1945, C. Civ. Proc. 1895; re-en. Sec. 7207, Rev. C. 1907; re-en. Sec. 9841, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1072; re-en. Sec. 9841, R.C.M. 1935; R.C.M. 1947, 93-9006; amd. Sec. 132, Ch. 575, L. 1981.

27-25-204. Service of writ. The writ must be served in the manner as a summons in civil action, except when otherwise expressly directed by the court or judge.

History: En. Sec. 377, p. 122, Bannack Stat.; re-en. Sec. 436, p. 223, L. 1867; re-en. Sec. 512, p. 140, Cod. Stat. 1871; re-en. Sec. 542, p. 180, L. 1877; re-en. Sec. 542, 1st Div. Rev. Stat. 1879; re-en. Sec. 560, 1st Div. Comp. Stat. 1887; re-en. Sec. 1946, C. Civ. Proc. 1895; re-en. Sec. 7208, Rev. C. 1907; re-en. Sec. 9842, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1073; re-en. Sec. 9842, R.C.M. 1935; R.C.M. 1947, 93-9007.

27-25-205. To whom writ directed — return. The writ may be directed to the inferior tribunal, board, or officer or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal, the clerk, if there be one, must return the writ with the transcript required.

History: En. Sec. 374, p. 121, Bannack Stat.; re-en. Sec. 433, p. 222, L. 1867; re-en. Sec. 509, p. 139, Cod. Stat. 1871; re-en. Sec. 539, p. 180, L. 1877; re-en. Sec. 539, 1st Div. Rev. Stat. 1879; re-en. Sec. 557, 1st Div. Comp. Stat. 1887; re-en. Sec. 1943, C. Civ. Proc. 1895; re-en. Sec. 7205, Rev. C. 1907; re-en. Sec. 9839, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1070; re-en. Sec. 9839, R.C.M. 1935; R.C.M. 1947, 93-9004.

Part 3

Procedure Upon Return of Writ

27-25-301. Time for return and hearing. Writs of review issued by the supreme court or by a district court or district judge may, in the discretion of the court issuing the writ, be made returnable and a hearing thereon be heard at any time.

History: En. Sec. 565, p. 185, L. 1877; re-en. Sec. 565, 1st Div. Rev. Stat. 1879; re-en. Sec. 583, 1st Div. Comp. Stat. 1887; amd. Sec. 1990, C. Civ. Proc. 1895; re-en. Sec. 7231, Rev. C. 1907; re-en. Sec. 9865, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1108; re-en. Sec. 9865, R.C.M. 1935; R.C.M. 1947, 93-9301(part).

27-25-302. Correction of defective return. If the return of the writ be defective, the court or judge may order a further return to be made.

History: En. Sec. 379, p. 122, Bannack Stat.; re-en. Sec. 438, p. 223, L. 1867; re-en. Sec. 514, p. 140, Cod. Stat. 1871; re-en. Sec. 544, p. 181, L. 1877; re-en. Sec. 544, 1st Div. Rev. Stat. 1879; re-en. Sec. 562, 1st Div. Comp. Stat. 1887; re-en. Sec. 1948, C. Civ. Proc. 1895; re-en. Sec. 7210, Rev. C. 1907; re-en. Sec. 9844, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1075; re-en. Sec. 9844, R.C.M. 1935; R.C.M. 1947, 93-9009(part).

27-25-303. Scope of review upon writ. The review upon this writ cannot be extended further than to determine whether the inferior tribunal, board, or officer has regularly pursued the authority of such tribunal, board, or officer.

History: En. Sec. 378, p. 122, Bannack Stat.; re-en. Sec. 437, p. 223, L. 1867; re-en. Sec. 513, p. 140, Cod. Stat. 1871; re-en. Sec. 543, p. 181, L. 1877; re-en. Sec. 543, 1st Div. Rev. Stat. 1879; re-en. Sec. 561, 1st Div. Comp. Stat. 1887; re-en. Sec. 1947, C. Civ. Proc. 1895; re-en. Sec. 7209, Rev. C. 1907; re-en. Sec. 9843, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1074; re-en. Sec. 9843, R.C.M. 1935; R.C.M. 1947, 93-9008.

27-25-304. Hearing and judgment. When a full return has been made, the court or judge must hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming, annulling, or modifying the proceedings below.

History: En. Sec. 379, p. 122, Bannack Stat.; re-en. Sec. 438, p. 223, L. 1867; re-en. Sec. 514, p. 140, Cod. Stat. 1871; re-en. Sec. 544, p. 181, L. 1877; re-en. Sec. 544, 1st Div. Rev. Stat. 1879;

re-en. Sec. 562, 1st Div. Comp. Stat. 1887; re-en. Sec. 1948, C. Civ. Proc. 1895; re-en. Sec. 7210, Rev. C. 1907; re-en. Sec. 9844, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1075; re-en. Sec. 9844, R.C.M. 1935; R.C.M. 1947, 93-9009(part).

Cross-References

Judgment, Title 25, ch. 9.

Judgments — costs, Rule 54, M.R.Civ.P. (see Title 25, ch. 20).

27-25-305. Copy of judgment to inferior tribunal or officer. A copy of the judgment, signed by the clerk, must be transmitted to the inferior tribunal, board, or officer having the custody of the record or proceeding certified upon.

History: En. Sec. 380, p. 122, Bannack Stat.; re-en. Sec. 439, p. 223, L. 1867; re-en. Sec. 515, p. 140, Cod. Stat. 1871; re-en. Sec. 545, p. 181, L. 1877; re-en. Sec. 545, 1st Div. Rev. Stat. 1879; re-en. Sec. 563, 1st Div. Comp. Stat. 1887; re-en. Sec. 1949, C. Civ. Proc. 1895; re-en. Sec. 7211, Rev. C. 1907; re-en. Sec. 9845, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1076; re-en. Sec. 9845, R.C.M. 1935; R.C.M. 1947, 93-9010.

CHAPTER 26

MANDAMUS — WRIT OF MANDATE

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27-26-101. Name of writ.
27-26-102. When and by whom issued.
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27-26-201. Application for writ.
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27-26-301. Time for return and hearing.
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27-26-303. Jury trial.
27-26-304. Applicant's response to answer.
27-26-305. Motion for new trial.
27-26-306. Argument to proceed if no new trial.
27-26-307. Procedure when there is no answer or no material issue of fact.

Part 4 — Judgment

27-26-401. Default not permitted.
27-26-402. Judgment for applicant.
27-26-403. Officers not to be personally liable.

Part 1

General Provisions

27-26-101. Name of writ. The writ of mandamus may be denominated a writ of mandate.

History: En. Sec. 382, p. 122, Bannack Stat.; re-en. Sec. 441, p. 224, L. 1867; re-en. Sec. 517, p. 141, Cod. Stat. 1871; re-en. Sec. 547, p. 181, L. 1877; re-en. Sec. 547, 1st Div. Rev. Stat. 1879; re-en. Sec. 565, 1st Div. Comp. Stat. 1887; re-en. Sec. 1960, C. Civ. Proc. 1895; re-en. Sec. 7213, Rev. C. 1907; re-en. Sec. 9847, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1084; re-en. Sec. 9847, R.C.M. 1935; R.C.M. 1947, 93-9101.

27-26-102. When and by whom issued. (1) It may be issued by the supreme court or the district court or any judge of the district court to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person.

(2) The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law.

History: (1)En. Sec. 383, p. 122, Bannack Stat.; amd. Sec. 442, p. 224, L. 1867; re-en. Sec. 518, p. 141, Cod. Stat. 1871; re-en. Sec. 548, p. 181, L. 1877; re-en. Sec. 548, 1st Div. Rev. Stat. 1879; re-en. Sec. 566, 1st Div. Comp. Stat. 1887; amd. Sec. 1961, C. Civ. Proc. 1895; re-en. Sec. 7214, Rev. C. 1907; re-en. Sec. 9848, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1085; re-en. Sec. 9848, R.C.M. 1935; Sec. 93-9102, R.C.M. 1947; (2)En. Sec. 384, p. 123, Bannack Stat.; re-en. Sec. 443, p. 224, L. 1867; re-en. Sec. 519, p. 141, Cod. Stat. 1871; re-en. Sec. 549, p. 181, L. 1877; re-en. Sec. 549, 1st Div. Rev. Stat. 1879; re-en. Sec. 567, 1st Div. Comp. Stat. 1887; amd. Sec. 1962, C. Civ. Proc. 1895; re-en. Sec. 7215, Rev. C. 1907; re-en. Sec. 9849, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1086; re-en. Sec. 9849, R.C.M. 1935; Sec. 93-9103, R.C.M. 1947; R.C.M. 1947, 93-9102, 93-9103(part).

Cross-References

Original jurisdiction — Supreme Court, 3-2-202.

Original jurisdiction — District Court, 3-5-302.

District Court — powers of Judges at chambers, 3-5-311.

Mandamus to compel enforcement of metal mine reclamation law, 82-4-354.

27-26-103. Application of rules of procedure. Except as otherwise provided in this chapter, the provisions of Title 25 are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter. The provisions of Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in this chapter.

History: Ap. p. Sec. 2000, C. Civ. Proc. 1895; re-en. Sec. 7232, Rev. C. 1907; re-en. Sec. 9866, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1109; re-en. Sec. 9866, R.C.M. 1935; Sec. 93-3902, R.C.M. 1947; Ap. p. Sec. 2001, C. Civ. Proc. 1895; re-en. Sec. 7233, Rev. C. 1907; re-en. Sec. 9867, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1110; re-en. Sec. 9867, R.C.M. 1935; Sec. 93-9303, R.C.M. 1947; R.C.M. 1947, 93-9302(part), 93-9303(part); amd. Sec. 55, Ch. 12, L. 1979.

Cross-References

New trial, Title 25, ch. 11.

Appeal to Supreme Court, Title 25, ch. 12.

New trials — amendment of judgment, Rule 59, M.R.Civ.P. (see Title 25, ch. 20).

Appeal from a District Court to the Supreme Court, Rule 72, M.R.Civ.P. (see Title 25, ch. 20).

Rules of Appellate Procedure, Title 25, ch. 21.

Part 2

Procedure for Obtaining, Serving, and Enforcing Writ

27-26-201. Application for writ. The writ must be issued upon affidavit, on the application of the party beneficially interested.

History: En. Sec. 384, p. 123, Bannack Stat.; re-en. Sec. 443, p. 224, L. 1867; re-en. Sec. 519, p. 141, Cod. Stat. 1871; re-en. Sec. 549, p. 181, L. 1877; re-en. Sec. 549, 1st Div. Rev. Stat. 1879; re-en. Sec. 567, 1st Div. Comp. Stat. 1887; amd. Sec. 1962, C. Civ. Proc. 1895; re-en. Sec. 7215, Rev. C. 1907; re-en. Sec. 9849, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1086; re-en. Sec. 9849, R.C.M. 1935; R.C.M. 1947, 93-9103(part).

Cross-References

Affidavits, Title 26, ch. 1, part 10.

27-26-202. Notice of application. The notice of the application, when given, must be at least 10 days or a shorter time, in the discretion of the court or judge.

History: En. Sec. 386, p. 123, Bannack Stat.; re-en. Sec. 445, p. 224, L. 1867; re-en. Sec. 521, p. 142, Cod. Stat. 1871; re-en. Sec. 551, p. 182, L. 1877; re-en. Sec. 551, 1st Div. Rev. Stat. 1879; re-en. Sec. 569, 1st Div. Comp. Stat. 1887; amd. Sec. 1964, C. Civ. Proc. 1895; re-en. Sec. 7217, Rev. C. 1907; re-en. Sec. 9851, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1088; re-en. Sec. 9851, R.C.M. 1935; R.C.M. 1947, 93-9105(part).

27-26-203. Form and content of writ. The writ may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed and command such party, immediately after the receipt of the writ or at some other specified time, to do the act required to be performed or to show cause before the court, at a specified time and place, why he has not done so. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he has not done as commanded must be omitted and a return day inserted.

History: En. Sec. 385, p. 123, Bannack Stat.; re-en. Sec. 444, p. 224, L. 1867; re-en. Sec. 520, p. 141, Cod. Stat. 1871; re-en. Sec. 550, p. 181, L. 1877; re-en. Sec. 550, 1st Div. Rev. Stat. 1879; re-en. Sec. 568, 1st Div. Comp. Stat. 1887; amd. Sec. 1963, C. Civ. Proc. 1895; re-en. Sec. 7216, Rev. C. 1907; re-en. Sec. 9850, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1087; re-en. Sec. 9850, R.C.M. 1935; R.C.M. 1947, 93-9104.

27-26-204. Factors that determine whether writ peremptory or alternative. When an application to the court or judge is made without notice to the adverse party and the writ be allowed, the alternative must be first issued; but if the application be upon due notice and the writ be allowed, the peremptory may be issued in the first instance.

History: En. Sec. 386, p. 123, Bannack Stat.; re-en. Sec. 445, p. 224, L. 1867; re-en. Sec. 521, p. 142, Cod. Stat. 1871; re-en. Sec. 551, p. 182, L. 1877; re-en. Sec. 551, 1st Div. Rev. Stat. 1879; re-en. Sec. 569, 1st Div. Comp. Stat. 1887; amd. Sec. 1964, C. Civ. Proc. 1895; re-en. Sec. 7217, Rev. C. 1907; re-en. Sec. 9851, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1088; re-en. Sec. 9851, R.C.M. 1935; R.C.M. 1947, 93-9105(part).

27-26-205. Service of writ. The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court or judge. Service upon a majority of the members of any board or body is service upon the board or body, whether at the time of the service the board or body was in session or not.

History: En. Sec. 394, p. 124, Bannack Stat.; re-en. Sec. 453, p. 225, L. 1867; re-en. Sec. 529, p. 143, Cod. Stat. 1871; en. Sec. 559, p. 183, L. 1877; re-en. Sec. 559, 1st Div. Rev. Stat. 1879; re-en. Sec. 577, 1st Div. Comp. Stat. 1887; re-en. Sec. 1972, C. Civ. Proc. 1895; re-en. Sec. 7225, Rev. C. 1907; re-en. Sec. 9859, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1096; re-en. Sec. 9859, R.C.M. 1935; R.C.M. 1947, 93-9113.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Rules incorporated into statutes, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

27-26-206. Enforcement of writ — penalty. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board, or person, if it appear to the court or judge that any member of such tribunal, corporation, or board or person upon whom the writ has been personally served has, without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding $1,000. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned until the writ is obeyed and may make any orders necessary and proper for the complete enforcement of the writ.

History: En. Sec. 395, p. 124, Bannack Stat.; re-en. Sec. 454, p. 225, L. 1867; re-en. Sec. 530, p. 143, Cod. Stat. 1871; re-en. Sec. 560, p. 183, L. 1877; re-en. Sec. 560, 1st Div. Rev. Stat. 1879; re-en. Sec. 578, 1st Div. Comp. Stat. 1887; amd. Sec. 1973, C. Civ. Proc. 1895; re-en. Sec. 7226, Rev. C. 1907; re-en. Sec. 9860, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1097; re-en. Sec. 9860, R.C.M. 1935; R.C.M. 1947, 93-9114.

Cross-References

Criminal code — limitations on applicability, 45-1-104.

Part 3

Procedure Upon Return of Writ

27-26-301. Time for return and hearing. Writs of mandate issued by the supreme court or by a district court or district judge may, in the discretion of the court issuing the writ, be made returnable and a hearing thereon be heard at any time.

History: En. Sec. 565, p. 185, L. 1877; re-en. Sec. 565, 1st Div. Rev. Stat. 1879; re-en. Sec. 583, 1st Div. Comp. Stat. 1887; amd. Sec. 1990, C. Civ. Proc. 1895; re-en. Sec. 7231, Rev. C. 1907; re-en. Sec. 9865, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1108; re-en. Sec. 9865, R.C.M. 1935; R.C.M. 1947, 93-9301(part).

27-26-302. Answer of adverse party. On the return of the alternative or the day on which the application for the writ is noticed, the party on whom the writ or notice has been served may show cause by answer, under oath, made in the same manner as an answer to a complaint in a civil action.

History: En. Sec. 387, p. 123, Bannack Stat.; re-en. Sec. 446, p. 224, L. 1867; re-en. Sec. 522, p. 142, Cod. Stat. 1871; re-en. Sec. 552, p. 182, L. 1877; re-en. Sec. 552, 1st Div. Rev. Stat. 1879; re-en. Sec. 570, 1st Div. Comp. Stat. 1887; amd. Sec. 1965, C. Civ. Proc. 1895; re-en. Sec. 7218, Rev. C. 1907; re-en. Sec. 9852, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1089; re-en. Sec. 9852, R.C.M. 1935; R.C.M. 1947, 93-9106.

Cross-References

Rules incorporated into statutes, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

27-26-303. Jury trial. (1) If an answer is made which raises a question as to a matter of fact essential to the determination of the motion and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court or judge may, in its or his discretion, order the question to be tried before a jury and postpone the argument until the trial can be had. The question to be tried must be distinctly stated in the order for trial. The order may also direct the jury to assess any damages which the applicant may have sustained if it finds for him.

(2) If the proceeding is in the district court or before a district judge, the trial must take place as in other cases. If a jury is required in the supreme court, a jury must be drawn and selected from the jury box of Lewis and Clark County and the clerk of the district court of that county shall place the box in the custody of the clerk of the supreme court for that purpose. The conduct of the trial must be the same as in the district court, and the clerk of the supreme court has the same authority to issue process and enter orders and judgments as the district court clerk has in like cases.

History: En. Sec. 388, p. 123, Bannack Stat.; re-en. Sec. 447, p. 224, L. 1867; re-en. Sec. 523, p. 142, Cod. Stat. 1871; re-en. Sec. 553, p. 182, L. 1877; re-en. Sec. 553, 1st Div. Rev. Stat. 1879; re-en. Sec. 571, 1st Div. Comp. Stat. 1887; en. Sec. 1966, C. Civ. Proc. 1895; re-en. Sec. 7219, Rev. C. 1907; re-en. Sec. 9853, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1090; re-en. Sec. 9853, R.C.M. 1935; R.C.M. 1947, 93-9107; amd. Sec. 56, Ch. 12, L. 1979.

27-26-304. Applicant's response to answer. On the trial the applicant is not precluded by the answer from any valid objection to its sufficiency and may contradict it by proof, either in direct denial or by way of avoidance.

History: En. Sec. 389, p. 123, Bannack Stat.; re-en. Sec. 448, p. 224, L. 1867; re-en. Sec. 524, p. 142, Cod. Stat. 1871; re-en. Sec. 554, p. 183, L. 1877; re-en. Sec. 554, 1st Div. Rev. Stat. 1879; re-en. Sec. 572, 1st Div. Comp. Stat. 1887; re-en. Sec. 1967, C. Civ. Proc. 1895; re-en. Sec. 7220, Rev. C. 1907; re-en. Sec. 9854, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1091; re-en. Sec. 9854, R.C.M. 1935; R.C.M. 1947, 93-9108.

Cross-References

Trials, Title 25, ch. 7.

27-26-305. Motion for new trial. The motion for a new trial must be made in the court in which the issue of fact is tried.

History: En. Sec. 555, p. 183, L. 1877; re-en. Sec. 555, 1st Div. Rev. Stat. 1879; re-en. Sec. 573, 1st Div. Comp. Stat. 1887; re-en. Sec. 1968, C. Civ. Proc. 1895; re-en. Sec. 7221, Rev. C. 1907; re-en. Sec. 9855, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1092; re-en. Sec. 9855, R.C.M. 1935; R.C.M. 1947, 93-9109.

Cross-References

New trial, Title 25, ch. 11.

New trials — amendment of judgment, Rule 59, M.R.Civ.P. (see Title 25, ch. 20).

27-26-306. Argument to proceed if no new trial. If no notice of a motion for a new trial be given or, if given, the motion be denied, the argument must proceed at any time the court or judge may direct.

History: En. Sec. 1969, C. Civ. Proc. 1895; re-en. Sec. 7222, Rev. C. 1907; re-en. Sec. 9856, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1093; re-en. Sec. 9856, R.C.M. 1935; R.C.M. 1947, 93-9110.

27-26-307. Procedure when there is no answer or no material issue of fact. If no answer be made, the case must be heard on the papers of the applicant. If the answer raises only questions of law or puts in issue immaterial statements not affecting the substantial right of the parties, the court or judge must proceed to hear or fix a day for hearing the argument of the case.

History: **En. Sec. 392, p. 124, Bannack Stat.; re-en. Sec. 451, p. 225, L. 1867; re-en. Sec. 527, p. 143, Cod. Stat. 1871; amd. Sec. 557, p. 183, L. 1877; re-en. Sec. 557, 1st Div. Rev. Stat. 1879; re-en. Sec. 575, 1st Div. Comp. Stat. 1887; re-en. Sec. 1970, C. Civ. Proc. 1895; re-en. Sec. 7223, Rev. C. 1907; re-en. Sec. 9857, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1094; re-en. Sec. 9857, R.C.M. 1935; R.C.M. 1947, 93-9111.**

Part 4

Judgment

27-26-401. Default not permitted. The writ cannot be granted by default. The case must be heard by the court or judge, whether the adverse party appear or not.

History: **En. Sec. 386, p. 123, Bannack Stat.; re-en. Sec. 445, p. 224, L. 1867; re-en. Sec. 521, p. 142, Cod. Stat. 1871; re-en. Sec. 551, p. 182, L. 1877; re-en. Sec. 551, 1st Div. Rev. Stat. 1879; re-en. Sec. 569, 1st Div. Comp. Stat. 1887; amd. Sec. 1964, C. Civ. Proc. 1895; re-en. Sec. 7217, Rev. C. 1907; re-en. Sec. 9851, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1088; re-en. Sec. 9851, R.C.M. 1935; R.C.M. 1947, 93-9105(part).**

27-26-402. Judgment for applicant. If judgment is given for the applicant:

(1) he may recover the damages which he has sustained, as found by the jury or as determined by the court or referees, if a reference was ordered, together with costs;

(2) an execution may issue for such damages and costs; and

(3) a peremptory mandate must be awarded without delay.

History: **En. Sec. 393, p. 124, Bannack Stat.; re-en. Sec. 452, p. 225, L. 1867; re-en. Sec. 528, p. 143, Cod. Stat. 1871; re-en. Sec. 558, p. 183, L. 1877; re-en. Sec. 558, 1st Div. Rev. Stat. 1879; re-en. Sec. 576, 1st Div. Comp. Stat. 1887; re-en. Sec. 1971, C. Civ. Proc. 1895; re-en. Sec. 7224, Rev. C. 1907; re-en. Sec. 9858, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1095; amd. Sec. 1, Ch. 5, L. 1925; re-en. Sec. 9858, R.C.M. 1935; R.C.M. 1947, 93-9112(part); amd. Sec. 57, Ch. 12, L. 1979.**

27-26-403. Officers not to be personally liable. In all cases where the respondent is a state, county, or municipal officer, all damages and costs, or either, which may be recovered or awarded shall be recovered and awarded against the state, county, or municipal corporation represented by such officer and not against such officer so appearing in said proceeding. The same shall be a proper claim against the state or county or municipal corporation for which such officer shall have appeared and shall be paid as other claims against the state, county, or municipality are paid; but in all such cases, the court shall first determine that the officer appeared and made defense in such proceeding in good faith.

History: **En. Sec. 393, p. 124, Bannack Stat.; re-en. Sec. 452, p. 225, L. 1867; re-en. Sec. 528, p. 143, Cod. Stat. 1871; re-en. Sec. 558, p. 183, L. 1877; re-en. Sec. 558, 1st Div. Rev. Stat. 1879; re-en. Sec. 576, 1st Div. Comp. Stat. 1887; re-en. Sec. 1971, C. Civ. Proc. 1895; re-en. Sec. 7224, Rev. C. 1907; re-en. Sec. 9858, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1095; amd. Sec. 1, Ch. 5, L. 1925; re-en. Sec. 9858, R.C.M. 1935; R.C.M. 1947, 93-9112(part).**

Cross-References

Liability exposure, Title 2, ch. 9, part 1.

Governmental entity to be joined as defendant — immunization, defense, and indemnification of employees, 2-9-305.

Payment of costs by governmental entities, Title 25, ch. 10, part 7.

CHAPTER 27

WRIT OF PROHIBITION

Part 1 — General Provisions

27-27-101. Definition and function of writ of prohibition.
27-27-102. Issuance of writ.
27-27-103. Form and content of writ.
27-27-104. Application of procedure governing mandamus.

Part 1

General Provisions

27-27-101. Definition and function of writ of prohibition. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person.

History: En. Sec. 561, p. 184, L. 1877; re-en. Sec. 561, 1st Div. Rev. Stat. 1879; re-en. Sec. 579, 1st Div. Comp. Stat. 1887; amd. Sec. 1980, C. Civ. Proc. 1895; re-en. Sec. 7227, Rev. C. 1907; re-en. Sec. 9861, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1102; re-en. Sec. 9861, R.C.M. 1935; R.C.M. 1947, 93-9201; amd. Sec. 14, Ch. 3, L. 1985.

Cross-References

Application of Montana Rules of Civil Procedure to this chapter, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

27-27-102. Issuance of writ. The same may be issued by the supreme court or the district court or any district judge to any inferior tribunal or to a corporation, board, or person in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon affidavit on the application of the person beneficially interested.

History: En. Sec. 562, p. 184, L. 1877; re-en. Sec. 562, 1st Div. Rev. Stat. 1879; re-en. Sec. 580, 1st Div. Comp. Stat. 1887; amd. Sec. 1981, C. Civ. Proc. 1895; re-en. Sec. 7228, Rev. C. 1907; re-en. Sec. 9862, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1103; re-en. Sec. 9862, R.C.M. 1935; R.C.M. 1947, 93-9202.

Cross-References

Supreme Court — original jurisdiction, 3-2-202.

District Court — original jurisdiction, 3-5-302.

District Court — powers of Judges at chambers, 3-5-311.

Affidavits, Title 26, ch. 1, part 10.

27-27-103. Form and content of writ. The writ must be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed and command such party to desist or refrain from further proceedings in the action or matter specified therein until the further order of the court or judge from which it is issued and to show cause before such court or judge, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, etc., must be omitted and a return day inserted.

History: En. Sec. 563, p. 184, L. 1877; re-en. Sec. 563, 1st Div. Rev. Stat. 1879; re-en. Sec. 581, 1st Div. Comp. Stat. 1887; re-en. Sec. 1982, C. Civ. Proc. 1895; re-en. Sec. 7229, Rev. C. 1907; re-en. Sec. 9863, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1104; re-en. Sec. 9863, R.C.M. 1935; R.C.M. 1947, 93-9203.

27-27-104. Application of procedure governing mandamus. The provisions of chapter 26, except 27-26-101, 27-26-102, 27-26-201, and 27-26-203, apply to this proceeding.

History: Ap. p. Sec. 564, p. 184, L. 1877; re-en. Sec. 564, 1st Div. Rev. Stat. 1879; re-en. Sec. 582, 1st Div. Comp. Stat. 1887; re-en. Sec. 1983, C. Civ. Proc. 1895; re-en. Sec. 7230, Rev. C. 1907; re-en. Sec. 9864, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1105; re-en. Sec. 9864, R.C.M. 1935; Sec. 93-9204, R.C.M. 1947; Ap. p. Sec. 565, p. 185, L. 1877; re-en. Sec. 565, 1st Div. Rev. Stat. 1879; re-en. Sec. 583, 1st Div. Comp. Stat. 1887; amd. Sec. 1990, C. Civ. Proc. 1895; re-en. Sec. 7231, Rev. C. 1907; re-en. Sec. 9865, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1108; re-en. Sec. 9865, R.C.M. 1935; Sec. 93-9301, R.C.M. 1947; Ap. p. Sec. 2000, C. Civ. Proc. 1895; re-en. Sec. 7232, Rev. C. 1907; re-en. Sec. 9866, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1109; re-en. Sec. 9866, R.C.M. 1935; Sec. 93-9302, R.C.M. 1947; Ap. p. Sec. 2001, C. Civ. Proc. 1895; re-en. Sec. 7233, Rev. C. 1907; re-en. Sec. 9867, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1110; re-en. Sec. 9867, R.C.M. 1935; Sec. 93-9303, R.C.M. 1947; R.C.M. 1947, 93-9204, 93-9301(part), 93-9302(part), 93-9303(part).

CHAPTER 28

QUO WARRANTO

Part 1 — General Provisions

27-28-101. When proceeding may be instituted for unlawful assertion of authority.
27-28-102. When proceeding may be brought against a corporation for misconduct.
27-28-103. When attorney general required to commence an action.
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Part 5 — Actions Against Corporations

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27-28-502. Judgment dissolving corporation.
27-28-503. Costs — judgment against corporation or alleged corporation.
27-28-504. Court appointed trustees to settle affairs of dissolved corporation.
27-28-505. Powers and duties of trustees — liability.
27-28-506. Refusal to deliver assets or papers to trustees — punishment for contempt, liability.

Part 1

General Provisions

27-28-101. When proceeding may be instituted for unlawful assertion of authority. A civil action may be brought in the name of the state against:

(1) a person who usurps, intrudes into, or unlawfully holds or exercises a public office, civil or military, or a franchise within this state or an office in a corporation created by the authority of this state;

(2) a public officer, civil or military, who does or suffers an act which, by the provisions of law, works a forfeiture of his office;

(3) an association of persons who act as a corporation within this state without being legally incorporated.

History: En. Sec. 1410, C. Civ. Proc. 1895; re-en. Sec. 6943, Rev. C. 1907; re-en. Sec. 9576, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 803; re-en. Sec. 9576, R.C.M. 1935; R.C.M. 1947, 93-6401.

27-28-102. When proceeding may be brought against a corporation for misconduct. A like action may be brought against a corporation when it has:

(1) offended against a provision of an act for its creation or renewal or any act altering or amending such acts;

(2) forfeited its privileges and franchises by nonuser;

(3) committed or omitted an act which amounts to a surrender of its corporate rights, privileges, and franchises;

(4) misused a franchise or privilege conferred upon it by law or exercised a franchise or privilege not so conferred.

History: En. Sec. 1411, C. Civ. Proc. 1895; re-en. Sec. 6944, Rev. C. 1907; re-en. Sec. 9577, R.C.M. 1921; re-en. Sec. 9577, R.C.M. 1935; R.C.M. 1947, 93-6402.

27-28-103. When attorney general required to commence an action. The attorney general shall commence an action:

(1) when directed by the governor; and

(2) when, upon complaint or otherwise, he has good reason to believe that any case specified in 27-28-102 can be established by proof.

History: En. Sec. 1412, C. Civ. Proc. 1895; re-en. Sec. 6945, Rev. C. 1907; re-en. Sec. 9578, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 803; re-en. Sec. 9578, R.C.M. 1935; R.C.M. 1947, 93-6403.

27-28-104. Upon whose relation action brought — security for costs. Such officer may, upon his own relation, bring any such action, or he may, on leave of the court or a judge thereof in vacation, bring the action upon the relation of another person; and if the action be brought under 27-28-101(1), he may require security for costs, to be given as in other cases.

History: En. Sec. 1413, C. Civ. Proc. 1895; re-en. Sec. 6946, Rev. C. 1907; re-en. Sec. 9579, R.C.M. 1921; re-en. Sec. 9579, R.C.M. 1935; R.C.M. 1947, 93-6404.

Cross-References

Security for costs, Title 25, ch. 10, part 6.

27-28-105. Jurisdiction and venue. An action under this chapter can be brought in the supreme court of the state or in the district court of the county in which the defendant or one of the defendants resides or is found or, when the defendant is a corporation, in the county in which it is situated or has a place of business.

History: En. Sec. 1417, C. Civ. Proc. 1895; re-en. Sec. 6950, Rev. C. 1907; re-en. Sec. 9583, R.C.M. 1921; re-en. Sec. 9583, R.C.M. 1935; R.C.M. 1947, 93-6408.

Cross-References

Original proceeding — extraordinary writs — acceptance and manner of conducting, Rule 17, M.R.App.P. (see Title 25, ch. 21).

27-28-106. Precedence on court calendar. Actions under this chapter in any court shall have precedence of any civil business pending therein; and the court, if the matter is of public concern, shall, on the motion of the attorney general or the attorney of the party, require as speedy a trial of the merits of the case as may be consistent with the rights of the parties.

History: En. Sec. 1433, C. Civ. Proc. 1895; re-en. Sec. 6966, Rev. C. 1907; re-en. Sec. 9599, R.C.M. 1921; re-en. Sec. 9599, R.C.M. 1935; R.C.M. 1947, 93-6424.

Part 2

Procedure in General

27-28-201. Leave to file complaint. Upon application for leave to file a complaint, the court or judge may direct notice thereof to be given to the defendant previous to granting such leave and may hear the defendant in opposition thereto; and if leave be granted, an entry thereof shall be made on the minutes of the court or the fact shall be endorsed by the judge on the complaint, which shall then be filed.

History: En. Sec. 1418, C. Civ. Proc. 1895; re-en. Sec. 6951, Rev. C. 1907; re-en. Sec. 9584, R.C.M. 1921; re-en. Sec. 9584, R.C.M. 1935; R.C.M. 1947, 93-6409.

27-28-202. Summons — complaint filed without leave. When the complaint is filed without leave and notice, a summons shall issue and be served as in other cases.

History: En. Sec. 1419, C. Civ. Proc. 1895; re-en. Sec. 6952, Rev. C. 1907; re-en. Sec. 9585, R.C.M. 1921; re-en. Sec. 9585, R.C.M. 1935; R.C.M. 1947, 93-6410.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Rules incorporated into statutes, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

27-28-203. Service by publication. When a summons is returned not served because the defendant or its officers or office cannot be found within the county, the clerk shall publish the summons as in other cases.

History: En. Sec. 1420, C. Civ. Proc. 1895; re-en. Sec. 6953, Rev. C. 1907; re-en. Sec. 9586, R.C.M. 1921; re-en. Sec. 9586, R.C.M. 1935; R.C.M. 1947, 93-6411.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Rules incorporated into statutes, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

27-28-204. Pleadings. The pleadings shall be as in other cases.

History: En. Sec. 1421, C. Civ. Proc. 1895; re-en. Sec. 6954, Rev. C. 1907; re-en. Sec. 9587, R.C.M. 1921; re-en. Sec. 9587, R.C.M. 1935; R.C.M. 1947, 93-6412.

Cross-References

Pleadings in general, Title 25, ch. 4, part 2.

Pleadings allowed — form of motions, Rule 7, M.R.Civ.P. (see Title 25, ch. 20).

General rules of pleading, Rule 8, M.R.Civ.P. (see Title 25, ch. 20).

Pleading special matters, Rule 9, M.R.Civ.P. (see Title 25, ch. 20).

Form of pleadings, Rule 10, M.R.Civ.P. (see Title 25, ch. 20).

Rules incorporated into statutes, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

27-28-205. Judgment — unlawful assertion of authority. When a defendant is found guilty of usurping, intruding into, or unlawfully holding or exercising an office, franchise, or privilege, judgment shall be rendered that such defendant be ousted and altogether excluded therefrom and that the relator recover his costs.

History: En. Sec. 1422, C. Civ. Proc. 1895; re-en. Sec. 6955, Rev. C. 1907; re-en. Sec. 9588, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 809; re-en. Sec. 9588, R.C.M. 1935; R.C.M. 1947, 93-6413.

Cross-References

Imposition of costs, Title 25, ch. 10, part 1.

27-28-206. Right to appeal. If the action is commenced in the district court, an appeal may be taken from the judgment by either party to the supreme court as in other cases.

History: En. Sec. 1435, C. Civ. Proc. 1895; re-en. Sec. 6968, Rev. C. 1907; re-en. Sec. 9601, R.C.M. 1921; re-en. Sec. 9601, R.C.M. 1935; R.C.M. 1947, 93-6426(part).

Cross-References

Appeal to Supreme Court, Title 25, ch. 12.

Rules of Appellate Procedure, Title 25, ch. 21.

Appeals from judgments and orders of District Court — how taken, Rule 4, M.R.App.P. (see Title 25, ch. 21).

Rules incorporated into statutes, Rule 52(c), M.R.App.P. (see Title 25, ch. 21).

27-28-207. Procedure when action brought in supreme court. Actions under this chapter commenced in the supreme court must be conducted in the same manner as if commenced in the district court, and the clerk of the supreme court has the same authority to issue summons and other process and to enter orders and judgments as the clerk of the district court has in like cases. All pleadings and the conduct of the trial must be the same as in the district court. If a jury is required to determine an issue of fact, a jury must be drawn and selected from the jury box of Lewis and Clark County and the clerk of the district court of that county shall place the jury box in the custody of the clerk of the supreme court for that purpose.

History: En. Sec. 1434, C. Civ. Proc. 1895; re-en. Sec. 6967, Rev. C. 1907; re-en. Sec. 9600, R.C.M. 1921; re-en. Sec. 9600, R.C.M. 1935; R.C.M. 1947, 93-6425; amd. Sec. 58, Ch. 12, L. 1979.

Cross-References

Original proceeding — acceptance and manner of conducting, Rule 17, M.R.App.P. (see Title 25, ch. 21).

Part 3

Actions by Private Persons for Usurpation of Office

27-28-301. When action may be commenced — undertaking for security. A person claiming to be entitled to a public office unlawfully held and exercised by another, by himself or by an attorney and counselor at law, may bring an action therefor in the name of the state, as provided in this chapter. On filing the complaint, such person shall enter into an undertaking, with two sufficient sureties to be approved by the judge or any judge of the court in which the action is brought, conditioned that such person will pay any judgment for costs or damages recovered against him and all costs and expenses incurred in the prosecution of the action, which undertaking shall be filed with the clerk of the court.

History: En. Sec. 1414, C. Civ. Proc. 1895; re-en. Sec. 6947, Rev. C. 1907; re-en. Sec. 9580, R.C.M. 1921; re-en. Sec. 9580, R.C.M, 1935; R.C.M. 1947, 93-6405.

27-28-302. Contents of complaint. When the action is against a person for usurping an office, the complaint shall set forth the name of the person who claims to be entitled thereto, with an averment of his right thereto.

History: En. Sec. 1415, C. Civ. Proc. 1895; re-en. Sec. 6948, Rev. C. 1907; re-en. Sec. 9581, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 805; re-en. Sec. 9581, R.C.M. 1935; R.C.M. 1947, 93-6406(part).

27-28-303. Who may be made defendants. All persons who claim to be entitled to the same office or franchise may be made defendants in the same action to try their respective rights to such office or franchise.

History: En. Sec. 1416, C. Civ. Proc. 1895; re-en. Sec. 6949, Rev. C. 1907; re-en. Sec. 9582, R.C.M. 1921; re-en. Sec. 9582, R.C.M. 1935; R.C.M. 1947, 93-6407.

27-28-304. Whose rights determined in judgment. Judgment may be rendered upon the right of the defendant and also upon the right of the person averred to be entitled, as provided in 27-28-302, or only upon the right of the defendant, as justice requires.

History: En. Sec. 1415, C. Civ. Proc. 1895; re-en. Sec. 6948, Rev. C. 1907; re-en. Sec. 9581, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 805; re-en. Sec. 9581, R.C.M. 1935; R.C.M. 1947, 93-6406(part).

27-28-305. No stay of judgment of ouster pending appeal. If there is judgment of ouster against the defendant, there shall be no stay of execution or proceedings pending such appeal.

History: En. Sec. 1435, C. Civ. Proc. 1895; re-en. Sec. 6968, Rev. C. 1907; re-en. Sec. 9601, R.C.M. 1921; re-en. Sec. 9601, R.C.M. 1935; R.C.M. 1947, 93-6426(part).

27-28-306. Rights of prevailing party to take office and demand books and papers. If judgment be rendered in favor of the person averred to be entitled to an office, he may, after taking the oath of office and executing any official bond required by law, take upon him the execution of the office and he shall immediately thereafter demand of the defendant all the books and papers in his custody or within his power appertaining to the office from which he has been ousted.

History: **En. Sec. 1425, C. Civ. Proc. 1895; re-en. Sec. 6958, Rev. C. 1907; re-en. Sec. 9591, R.C.M. 1921; re-en. Sec. 9591, R.C.M. 1935; R.C.M. 1947, 93-6416.**

27-28-307. Refusal to turn over books and papers punishable as contempt. If such defendant refuse or neglect to deliver over any such book or paper pursuant to such demand, he shall be deemed guilty of a contempt of court and shall be fined in any sum not exceeding $10,000 and imprisoned in the jail of the county until he complies with the order of the court or is otherwise discharged by due course of law.

History: **En. Sec. 1427, C. Civ. Proc. 1895; re-en. Sec. 6960, Rev. C. 1907; re-en. Sec. 9593, R.C.M. 1921; re-en. Sec. 9593, R.C.M. 1935; R.C.M. 1947, 93-6418.**

Cross-References

Contempts, Title 3, ch. 1, part 5.

27-28-308. Subsequent action for damages for usurpation. The person in whose favor judgment is rendered may, at any time within 1 year after the date of such judgment, bring an action against the party ousted and recover the damages he sustained by reason of such usurpation.

History: **En. Sec. 1426, C. Civ. Proc. 1895; re-en. Sec. 6959, Rev. C. 1907; re-en. Sec. 9592, R.C.M. 1921; re-en. Sec. 9592, R.C.M. 1935; R.C.M. 1947, 93-6417.**

Part 4

Actions to Oust Irregularly Elected Corporate Directors

Part Cross-References

Business corporations — directors and officers, Title 35, ch. 1, part 4.

Nonprofit corporations — directors and officers, Title 35, ch. 2, part 4.

27-28-401. When judgment of ouster rendered. When the action is against a director of a corporation and the court finds that at his election either illegal votes were received or legal votes were rejected, or both, sufficient to change the result, judgment may be rendered that the defendant be ousted and of induction in favor of the person who was entitled to be declared elected at such election.

History: **En. Sec. 1423, C. Civ. Proc. 1895; re-en. Sec. 6956, Rev. C. 1907; re-en. Sec. 9589, R.C.M. 1921; re-en. Sec. 9589, R.C.M. 1935; R.C.M. 1947, 93-6414.**

27-28-402. Court order to hold new election. In a case named in 27-28-401, the court may order a new election to be held, at a time and place and by judges appointed by the court, notice of which election and naming the judges shall be given for the time and in the manner provided by law for notice of elections of directors of such corporation. The order of the court shall become obligatory upon the corporation and its officers when a duly certified copy thereof is served upon its secretary personally or left at its principal office, and the court may enforce its order by attachment or in any other manner it deems necessary.

History: **En. Sec. 1424, C. Civ. Proc. 1895; re-en. Sec. 6957, Rev. C. 1907; re-en. Sec. 9590, R.C.M. 1921; re-en. Sec. 9590, R.C.M. 1935; R.C.M. 1947, 93-6415.**

Part 5

Actions Against Corporations

Part Cross-References
Corporations, Partnerships, and Associations, Title 35.

27-28-501. Judgment forbidding continuation of offending acts. When it is found and adjudged that a corporation has offended in any matter or manner which does not work such surrender or forfeiture, misused a franchise, or exercised a power not conferred by law, judgment shall be entered that it be ousted from the continuance of such offense or the exercise of such power.

History: **En. Sec. 1428, C. Civ. Proc. 1895; re-en. Sec. 6961, Rev. C. 1907; re-en. Sec. 9594, R.C.M. 1921; re-en. Sec. 9594, R.C.M. 1935; R.C.M. 1947, 93-6419(part).**

27-28-502. Judgment dissolving corporation. When in any such action it is found and adjudged that a corporation has, by an act done or omitted, surrendered or forfeited its corporate rights, privileges, or franchises or has not used the same during a term of 5 years, judgment shall be entered that it be ousted and excluded therefrom and that it be dissolved.

History: **En. Sec. 1428, C. Civ. Proc. 1895; re-en. Sec. 6961, Rev. C. 1907; re-en. Sec. 9594, R.C.M. 1921; re-en. Sec. 9594, R.C.M. 1935; R.C.M. 1947, 93-6419(part).**

27-28-503. Costs — judgment against corporation or alleged corporation. If judgment be rendered against a corporation or against a person claiming to be a corporation, the court may render judgment for costs against the directors or other officers of the corporation or against the person claiming to be a corporation.

History: **En. Sec. 1432, C. Civ. Proc. 1895; re-en. Sec. 6965, Rev. C. 1907; re-en. Sec. 9598, R.C.M. 1921; re-en. Sec. 9598, R.C.M. 1935; R.C.M. 1947, 93-6423.**

Cross-References
Costs, Title 25, ch. 10.
Imposition of costs, Title 25, ch. 10, part 1.

27-28-504. Court appointed trustees to settle affairs of dissolved corporation. The court rendering a judgment dissolving a corporation shall appoint trustees of the creditors and stockholders of the corporation, who, after giving an undertaking payable to the state, in such sum and with such sureties as the court may designate and approve, conditioned that they will faithfully discharge their trust and properly pay and apply all money that may come into their hands, shall have power to settle the affairs of the corporation, collect and pay outstanding debts, and divide among the stockholders the money and other property which remain after the payment of debts and necessary expenses.

History: **En. Sec. 1429, C. Civ. Proc. 1895; re-en. Sec. 6962, Rev. C. 1907; re-en. Sec. 9595, R.C.M. 1921; re-en. Sec. 9595, R.C.M. 1935; R.C.M. 1947, 93-6420.**

27-28-505. Powers and duties of trustees — liability. (1) The trustees shall immediately demand all money, property, and papers within the custody or control of the officers of the corporation belonging to the corporation or in any way necessary for the settlement of its affairs or for the discharge of its debts and liabilities; and they may sue for and recover the demands and property of the corporation.

(2) The trustees are jointly and severally liable to the creditors and stockholders of the corporation to the extent of its property and effects which come into their hands.

History: En. Sec. 1430, C. Civ. Proc. 1895; re-en. Sec. 6963, Rev. C. 1907; re-en. Sec. 9596, R.C.M. 1921; re-en. Sec. 9596, R.C.M. 1935; R.C.M. 1947, 93-6421; amd. Sec. 59, Ch. 12, L. 1979.

27-28-506. Refusal to deliver assets or papers to trustees — punishment for contempt, liability. An officer of such corporation who refuses or neglects to deliver over any such money or other things pursuant to such demand shall be deemed guilty of a contempt of court and shall be fined not exceeding $10,000 and imprisoned in the jail of the proper county until he complies with the order of the court or is otherwise discharged by due course of law, and he shall be liable to the trustees for the value of all money or other things so refused or neglected to be surrendered, together with all damages that have been sustained by the stockholders and creditors of the corporation, or any of them, in consequence of such neglect or refusal.

History: En. Sec. 1431, C. Civ. Proc. 1895; re-en. Sec. 6964, Rev. C. 1907; re-en. Sec. 9597, R.C.M. 1921; re-en. Sec. 9597, R.C.M. 1935; R.C.M. 1947, 93-6422.

CHAPTER 29

RESERVED

CHAPTER 30

NUISANCES

Part 1 — General Provisions

27-30-101. Definition of nuisance.
27-30-102. Distinction between public and private nuisances.
27-30-103. Action for nuisance.
27-30-104. Right to recover damages unaffected by abatement.
27-30-105. Successive owners liable for nuisance.

Part 2 — Public Nuisances

27-30-201. Public nuisance not legalized by time.
27-30-202. Remedies for public nuisances.
27-30-203. When private person may maintain action for public nuisance.
27-30-204. Abatement of public nuisance by public body or officer or injured party.

Part 3 — Private Nuisances

27-30-301. Remedies for private nuisances.
27-30-302. Abatement of private nuisance by injured party.

Part 1

General Provisions

27-30-101. Definition of nuisance. (1) Anything which is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or which unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin or any public park, square, street, or highway is a nuisance.

(2) Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.

(3) No agricultural or farming operation, place, establishment, or facility or any of its appurtenances or the operation thereof is or becomes a public or private nuisance because of the normal operation thereof as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

History: (1)En. Sec. 4550, Civ. C. 1895; re-en. Sec. 6162, Rev. C. 1907; re-en. Sec. 8642, R.C.M. 1921; Cal. Civ. C. Sec. 3479; re-en. Sec. 8642, R.C.M 1935; Sec. 57-101, R.C.M. 1947; (2)En. Sec. 4553, Civ. C. 1895; re-en. Sec. 6165, Rev. C. 1907; re-en. Sec. 8645, R.C.M. 1921; Cal. Civ. C. Sec. 3482; Field Civ. C. Sec. 1952; re-en. Sec. 8645, R.C.M. 1935; Sec. 57-104, R.C.M. 1947; R.C.M. 1947, 57-101, 57-104; (3)En. Sec. 1, Ch. 123, L. 1981.

Cross-References
Criminal code — public nuisance, 45-8-111.
Criminal code — action to abate a public nuisance, 45-8-112.
Interference with canal or ditch easements, 70-17-112.
Public ways, 85-1-111.
Navigable waters, 85-1-112.

27-30-102. Distinction between public and private nuisances. (1) A public nuisance is one which affects, at the same time, an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

(2) Every nuisance not included in the definition of subsection (1) is private.

History: (1)En. Sec. 4551, Civ. C. 1895; re-en. Sec. 6163, Rev. C. 1907; re-en. Sec. 8643, R.C.M. 1921; Cal. Civ. C. Sec. 3480; Based on Field Civ. C. Sec. 1950; re-en. Sec. 8643, R.C.M. 1935; Sec. 57-102, R.C.M. 1947; (2)En. Sec. 4552, Civ. C. 1895; re-en. Sec. 6164, Rev. C. 1907; re-en. Sec. 8644, R.C.M. 1921; Cal. Civ. C. Sec. 3481; Field Civ. C. Sec. 1951; re-en. Sec. 8644, R.C.M. 1935; Sec. 57-103, R.C.M. 1947; R.C.M. 1947, 57-102, 57-103.

Cross-References
Criminal code — public nuisance, 45-8-111.

27-30-103. Action for nuisance. A nuisance is the subject of an action. Such action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

History: En. Sec. 228, p. 91, Bannack Stat.; amd. Sec. 249, p. 187, L. 1867; re-en. Sec. 298, p. 93, Cod. Stat. 1871; re-en. Sec. 349, p. 137, L. 1877; re-en. Sec. 349, 1st Div. Rev. Stat. 1879; re-en. Sec. 361, 1st Div. Comp. Stat. 1887; re-en. Sec. 1300, C. Civ. Proc. 1895; re-en Sec. 6865, Rev. C. 1907; re-en. Sec. 9474, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 731; re-en. Sec. 9474, R.C.M. 1935; R.C.M. 1947, 93-6101(part).

27-30-104. Right to recover damages unaffected by abatement. The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

History: En. Sec. 4555, Civ. C. 1895; re-en. Sec. 6167, Rev. C. 1907; re-en. Sec. 8647, R.C.M. 1921; Cal. Civ. C. Sec. 3484; Field Civ. C. Sec. 1954; re-en. Sec. 8647, R.C.M. 1935; R.C.M. 1947, 57-106.

27-30-105. Successive owners liable for nuisance. Every successive owner of property who neglects to abate a continuing nuisance upon or in the use of such property, created by a former owner, is liable therefor in the same manner as the one who first created it.

History: En. Sec. 4554, Civ. C. 1895; re-en. Sec. 6166, Rev. C. 1907; re-en. Sec. 8646, R.C.M. 1921; Cal. Civ. C. Sec. 3483; Field Civ. C. Sec. 1953; re-en. Sec. 8646, R.C.M. 1935; R.C.M. 1947, 57-105.

Part 2

Public Nuisances

27-30-201. Public nuisance not legalized by time. No lapse of time can legalize a public nuisance amounting to an actual obstruction of public right.

History: En. Sec. 4570, Civ. C. 1895; re-en. Sec. 6168, Rev. C. 1907; re-en. Sec. 8648, R.C.M. 1921; Cal. Civ. C. Sec. 3490; Field Civ. C. Sec. 1955; re-en. Sec. 8648, R.C.M. 1935; R.C.M. 1947, 57-107.

27-30-202. Remedies for public nuisances. (1) The remedies against a public nuisance are:

(a) indictment or information;
(b) a civil action; or
(c) abatement.

(2) The remedy by indictment or information is regulated by Titles 45 and 46.

History: (1)En. Sec. 4571, Civ. C. 1895; re-en. Sec. 6169, Rev. C. 1907; re-en. Sec. 8649, R.C.M. 1921; Cal. Civ. C. Sec. 3491; Based on Field Civ. C. Sec. 1956; re-en. Sec. 8649, R.C.M. 1935; Sec. 57-108, R.C.M. 1947; (2)En. Sec. 4572, Civ. C. 1895; re-en. Sec. 6170, Rev. C. 1907; re-en. Sec. 8650, R.C.M. 1921; Cal. Civ. C. Sec. 3492; re-en. Sec. 8650, R.C.M. 1935; Sec. 57-109, R.C.M. 1947; R.C.M. 1947, 57-108, 57-109.

27-30-203. When private person may maintain action for public nuisance. A private person may maintain an action for a public nuisance if it is specially injurious to himself, but not otherwise.

History: En. Sec. 4573, Civ. C. 1895; re-en. Sec. 6171, Rev. C. 1907; re-en. Sec. 8651, R.C.M. 1921; Cal. Civ. C. Sec. 3493; Field Civ. C. Sec. 1958; re-en. Sec. 8651, R.C.M. 1935; R.C.M. 1947, 57-110.

27-30-204. Abatement of public nuisance by public body or officer or injured party. A public nuisance may be abated by any public body or officer authorized thereto by law. Any person may abate a public nuisance which is specially injurious to him by removing or, if necessary, destroying the thing that constitutes the same without committing a breach of the peace or doing unnecessary injury.

History: Ap. p. Sec. 4574, Civ. C. 1895; re-en. Sec. 6172, Rev. C. 1907; re-en. Sec. 8652, R.C.M. 1921; Cal. Civ. C. Sec. 3494; Field Civ. C. Sec. 1959; re-en. Sec. 8652, R.C.M. 1935; Sec. 57-111, R.C.M. 1947; Ap. p. Sec. 4575, Civ. C. 1895; re-en. Sec. 6173, Rev. C. 1907; re-en. Sec. 8653, R.C.M. 1921; Cal. Civ. C. Sec. 3495; Field Civ. C. Sec. 1960; re-en. Sec. 8653, R.C.M. 1935; Sec. 57-112, R.C.M. 1947; R.C.M. 1947, 57-111, 57-112.

Cross-References

City or Town Council — power to control nuisances, 7-5-4104.

Noxious weeds — common nuisance, 7-22-2115.

Mausoleum and columbarium — public nuisance, 35-21-712.

Unsanitary condition in building or facility — public nuisance, 50-1-203.

Local Boards of Health — power to abate nuisances, 50-2-116.

Structure creating a fire hazard a public nuisance, 50-62-102.

Fallen wire fencing declared nuisance, 81-4-105.

Male equine animals running at large as nuisance, 81-4-205.

Abandoned horses on public range a public nuisance — condemnation, 81-4-502.

Part 3

Private Nuisances

27-30-301. Remedies for private nuisances. The remedies against a private nuisance are:

(1) a civil action; or

(2) abatement.

History: En. Sec. 4590, Civ. C. 1895; re-en. Sec. 6174, Rev. C. 1907; re-en. Sec. 8654, R.C.M. 1921; Cal. Civ. C. Sec. 3501; Field Civ. C. Sec. 1961; re-en. Sec. 8654, R.C.M. 1935; R.C.M. 1947, 57-113.

27-30-302. Abatement of private nuisance by injured party. A person injured by a private nuisance may abate it by removing or, if necessary, destroying the thing which constitutes the nuisance without committing a breach of the peace or doing unnecessary injury. Where a private nuisance results from a mere omission of the wrongdoer and cannot be abated without entering upon his land, reasonable notice must be given to him before entering to abate it.

History: Ap. p. Sec. 4591, Civ. C. 1895; re-en. Sec. 6175, Rev. C. 1907; re-en. Sec. 8655, R.C.M. 1921; Cal. Civ. C. Sec. 3502; Field Civ. C. Sec. 1962; re-en. Sec. 8655, R.C.M. 1935; Sec. 57-114, R.C.M. 1947; Ap. p. Sec. 4592, Civ. C. 1895; re-en. Sec. 6176, Rev. C. 1907; re-en. Sec. 8656, R.C.M. 1921; Cal. Civ. C. Sec. 3503; Field Civ. C. Sec. 1963; re-en. Sec. 8656, R.C.M. 1935; Sec. 57-115, R.C.M. 1947; R.C.M. 1947, 57-114, 57-115.

CHAPTER 31

CHANGE OF NAME

Part 1 — General Provisions

27-31-101. Petition for change of name of natural person.
27-31-102. Petition for change of name of nonprofit corporation.
27-31-103. District court jurisdiction.

Part 2 — Procedure

27-31-201. Order setting hearing date — notice.
27-31-202. Filing of objections to change.
27-31-203. Conduct of hearing.
27-31-204. Court order.
27-31-205. Repealed.

Chapter Cross-References

Dissolution decree — restoration of maiden name, 40-4-108.

Vital statistics, Title 50, ch. 15.

Part 1

General Provisions

27-31-101. Petition for change of name of natural person. All applications for change of names must be made to the district court of the county where the person whose name is proposed to be changed resides, by petition signed by such person and, if such person is under 18 years of age, by one of the parents, if living, or if both be dead, then by the guardian, and if there be no guardian, then by some near relative or friend. The petition must specify the place of birth and residence of such person, his or her present name, the name proposed, and the reason for such change of name and must, if neither parent of such person be living, name as far as known to the petitioner the near relatives of such person and their place of residence.

History: En. Sec. 2261, C. Civ. Proc. 1895; re-en. Sec. 7361, Rev. C. 1907; amd. Sec. 1, Ch. 39, L. 1921; re-en. Sec. 9964, R.C.M. 1921; re-en. Sec. 9964, R.C.M. 1935; amd. Sec. 21, Ch. 240, L. 1971; amd. Sec. 33, Ch. 94, L. 1973; amd. Sec. 59, Ch. 535, L. 1975; R.C.M. 1947, 93-100-2(part).

27-31-102. Petition for change of name of nonprofit corporation. Any religious, benevolent, literary, or scientific corporation or any corporation bearing or using or being known by the name of any benevolent or charitable order or society may by petition apply to the district court of the county in which its articles of incorporation were originally filed or in which its property is situated for a change of its corporate name. Such petition must be signed by a majority of the directors or trustees of the corporation and must specify the date of the formation of the corporation, the name proposed, and the reason for the change of name. Upon the filing of the petition, the same procedure shall be followed as upon applications for changes of names of natural persons.

History: En. Sec. 2261, C. Civ. Proc. 1895; re-en. Sec. 7361, Rev. C. 1907; amd. Sec. 1, Ch. 39, L. 1921; re-en. Sec. 9964, R.C.M. 1921; re-en. Sec. 9964, R.C.M. 1935; amd. Sec. 21, Ch. 240, L. 1971; amd. Sec. 33, Ch. 94, L. 1973; amd. Sec. 59, Ch. 535, L. 1975; R.C.M. 1947, 93-100-2(part); amd. Sec. 60, Ch. 12, L. 1979.

Cross-References

Articles of amendment — filing — issuance of certificate of amendment — effect of issuance, 35-2-209.

27-31-103. District court jurisdiction. Applications for change of names must be heard and determined by the district court.

History: En. Sec. 2260, C. Civ. Proc. 1895; re-en. Sec. 7360, Rev. C. 1907; re-en. Sec. 9963, R.C.M. 1921; re-en. Sec. 9963, R.C.M. 1935; R.C.M. 1947, 93-100-1.

Part 2

Procedure

27-31-201. Order setting hearing date — notice. (1) When a petition setting out the matters contained in 27-31-101 or 27-31-102 is filed, the court or judge may appoint a time for hearing the petition. Except as provided in subsection (2), notice of the time and place of hearing the petition must be published for 4 successive weeks in some newspaper published in the county, if a newspaper be printed therein, but if no newspaper be printed in the county, a copy of such notice must be posted in at least three public places in the county for a like period.

(2) No publication is required for a change of name of a minor under 27-31-101 if both parents and all legal guardians consent in writing.

History: En. Sec. 2262, C. Civ. Proc. 1895; re-en. Sec. 7362, Rev. C. 1907; amd. Sec. 1, Ch. 7, L. 1911; re-en. Sec. 9965, R.C.M. 1921; re-en. Sec. 9965, R.C.M. 1935; R.C.M. 1947, 93-100-3; amd. Sec. 1, Ch. 233, L. 1987.

Compiler's Comments

1987 Amendment: At beginning of second sentence inserted exception clause; and inserted (2).

27-31-202. Filing of objections to change. At any time before such hearing, objections may be filed by any person who can, in such objections, show to the court or judge good reasons against such change of name.

History: En. Sec. 2263, C. Civ. Proc. 1895; re-en. Sec. 7363, Rev. C. 1907; amd. Sec. 2, Ch. 7, L. 1911; re-en. Sec. 9966, R.C.M. 1921; re-en. Sec. 9966, R.C.M. 1935; R.C.M. 1947, 93-100-4(part).

27-31-203. Conduct of hearing. On the day set for the hearing of said petition or at any time to which the hearing is continued or postponed, due proof of the publication or posting of the required notice as set out in 27-31-201 being made, such application must be heard. On the hearing the court or judge may examine on oath any of the petitioners, remonstrants, or other persons touching the application.

History: En. Sec. 2263, C. Civ. Proc. 1895; re-en. Sec. 7363, Rev. C. 1907; amd. Sec. 2, Ch. 7, L. 1911; re-en. Sec. 9966, R.C.M. 1921; re-en. Sec. 9966, R.C.M. 1935; R.C.M. 1947, 93-100-4(part).

27-31-204. Court order. The court or judge may make an order changing the name or dismissing the applications, as to the court or judge may seem right and proper.

History: En. Sec. 2263, C. Civ. Proc. 1895; re-en. Sec. 7363, Rev. C. 1907; amd. Sec. 2, Ch. 7, L. 1911; re-en. Sec. 9966, R.C.M. 1921; re-en. Sec. 9966, R.C.M. 1935; R.C.M. 1947, 93-100-4(part).

27-31-205. Repealed. Sec. 3, Ch. 3, L. 1983.

History: En. Sec. 2264, C. Civ. Proc. 1895; re-en. Sec. 7364, Rev. C. 1907; re-en. Sec. 9967, R.C.M. 1921; re-en. Sec. 9967, R.C.M. 1935; R.C.M. 1947, 93-100-5; amd. Sec. 61, Ch. 12, L. 1979.

CHAPTER 32

JUDICIAL DETERMINATION OF BIRTH DATE

Part 1 — General Provisions Petition for Determination

27-32-101. Who may petition — where petition filed.
27-32-102. Contents of petition.
27-32-103. Exclusive jurisdiction of district courts.
27-32-104. Fees.

Part 2 — Preliminary Procedure—Hearing

27-32-201. Order setting hearing date — notice.
27-32-202. Objections to granting of petition.
27-32-203. Conduct of hearing.
27-32-204. Transfer of proceeding to proper county.

Part 3 — Judgment—Appeal

27-32-301. Judgment.
27-32-302. Clerk to certify and file judgment.
27-32-303. Appeal.

Chapter Cross-References

Establishment of date and place of birth when certificate cannot be obtained, 50-15-205.

Part 1

General Provisions Petition for Determination

27-32-101. Who may petition — where petition filed. For the purpose of having a judicial determination of the date of birth, any citizen of the United States, either natural born or naturalized, may file with the clerk of the district court of the county of his residence a petition.

History: En. Sec. 1, Ch. 16, L. 1943; R.C.M. 1947, 93-101-1(part).

27-32-102. Contents of petition. The petition must be duly verified by the petitioner and must contain the following:

(1) The petition must state:

(a) that the petitioner is a citizen of the United States;

(b) that he has resided in the state of Montana for 1 year last past and in the county in which the action is brought for at least 90 days immediately preceding the commencement of the action;

(c) the place of his birth;

(d) the names of his parents, together with the place of the birth of each of his parents and their address, if they are living;

(e) the name and address of each of his brothers and sisters;

(f) if the address of either of the parents or of any of the brothers or sisters is not known, then their last known place of address.

(2) If the petitioner was born outside of the United States, then the petition must state:

(a) whether his parents came to the United States and, if so, where they came and where they resided or reside;

(b) whether they or either of them were naturalized within the United States and, if so, when and where such naturalization took place.

History: En. Sec. 1, Ch. 16, L. 1943; R.C.M. 1947, 93-101-1(part).

27-32-103. Exclusive jurisdiction of district courts. The district courts of this state shall have exclusive jurisdiction to hear and determine all petitions hereunder.

History: En. Sec. 6, Ch. 16, L. 1943; R.C.M. 1947, 93-101-6(part).

27-32-104. Fees. The petitioner, upon the filing of the petition, must pay to the clerk of court a fee of $1, and upon the entry of judgment the applicant must pay to the clerk of court an additional fee of $1. No charge shall be made for posting of the notices required hereunder. If the applicant shall provide a true copy of the judgment rendered, then the clerk of court must certify the same without additional charge.

History: En. Sec. 4, Ch. 16, L. 1943; amd. Sec. 105, Ch. 349, L. 1974; R.C.M. 1947, 93-101-4(part).

Part 2

Preliminary Procedure — Hearing

27-32-201. Order setting hearing date — notice. Upon the filing of this petition with the clerk of the district court, an order shall be made by the court or judge thereof fixing the date of the hearing of the petition and directing that notice of such hearing be given as in such order set forth. Notice shall be given by posting in three public places within the county for a period of not less than 10 or more than 30 days, as the court, in its discretion, shall determine.

History: En. Sec. 2, Ch. 16, L. 1943; R.C.M. 1947, 93-101-2(part).

27-32-202. Objections to granting of petition. Any citizen of the United States may appear and object to the granting of such petition, but all such objections shall be made in writing.

History: En. Sec. 2, Ch. 16, L. 1943; R.C.M. 1947, 93-101-2(part).

27-32-203. Conduct of hearing. At the time fixed for the hearing of such petition, the petitioner must appear and testify. Upon the hearing thereof, affidavits shall be received in evidence and shall have the same force and effect as if the testimony had been taken by deposition.

History: En. Sec. 3, Ch. 16, L. 1943; R.C.M. 1947, 93-101-3(part).

Cross-References

Use of depositions in court proceedings, Rule 32, M.R.Civ.P. (see Title 25, ch. 20).

27-32-204. Transfer of proceeding to proper county. If upon the hearing of the petition it shall appear that the petitioner is entitled to have judgment entered as herein provided but that the petition has been filed in the wrong county, then the court shall, by appropriate order, direct that the proceeding be transferred to the proper county.

History: En. Sec. 5, Ch. 16, L. 1943; R.C.M. 1947, 93-101-5.

Part 3

Judgment — Appeal

27-32-301. Judgment. If the court shall be satisfied by competent evidence of the sufficiency of the petition that the applicant is a citizen of the United States, that he has been a citizen of the state of Montana for 1 year last past and of the county for more than 90 days preceding the filing of the petition, and that the applicant's date of birth is proven, then the court shall render judgment accordingly and that judgment shall constitute conclusive evidence of the date of the birth of the applicant.

History: En. Sec. 3, Ch. 16, L. 1943; R.C.M. 1947, 93-101-3(part).

27-32-302. Clerk to certify and file judgment. The clerk of the court shall certify to two copies of such judgment and file one with the department of health and environmental sciences, Helena, and the other with the county clerk and recorder of the county in which the judgment was obtained.

History: En. Sec. 4, Ch. 16, L. 1943; amd. Sec. 105, Ch. 349, L. 1974; R.C.M. 1947, 93-101-4(part).

27-32-303. Appeal. Any citizen may appeal from the judgment rendered the same as in civil actions.

History: En. Sec. 6, Ch. 16, L. 1943; R.C.M. 1947, 93-101-6(part).

Cross-References

Rules incorporated into statutes, Rule 52(c), M.R.App.P. (see Title 25, ch. 21).

TITLE 28

CONTRACTS AND OTHER OBLIGATIONS

Ch.
1. Obligations in General.
2. Contracts.
3. Interpretation of Contracts.
Chapters 4 through 9 reserved.
10. Agency.
11. Guaranty, Indemnity, and Suretyship.

CHAPTER 1

OBLIGATIONS IN GENERAL

Part 1 — General Provisions

28-1-101. Definitions.
28-1-102. How obligations arise.
28-1-103. What rules govern interpretation of contracts and other obligations.
28-1-104. Relief from forfeiture.

Part 2 — Obligations Imposed by Law

28-1-201. General duty of care.
28-1-202. Obligation of one who unilaterally decides to render service.
28-1-203. Enforcement of obligations arising by operation of law.
28-1-204 through 28-1-210 reserved.
28-1-211. Implied covenant of good faith and fair dealing.

Part 3 — Joint Obligations

28-1-301. Types of obligations involving several persons.
28-1-302. Joint obligations and covenants to be taken as joint and several.
28-1-303. Right to contribution from joint debtors.

Part 4 — Conditional Obligations

28-1-401. What obligations are conditional.
28-1-402. Types of conditions.
28-1-403. Condition precedent defined.
28-1-404. Condition concurrent defined.
28-1-405. Condition subsequent defined.
28-1-406. What conditions must be performed before requiring performance by another.
28-1-407. When prior performance of conditions excused.
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Part 5 — Alternative Obligations

28-1-501. Who may select between alternative performances.
28-1-502. How right of selection lost.
28-1-503. One alternative to be selected in its entirety.
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28-1-1002. When burden of obligation may be transferred.

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28-1-1101. Extinction of obligation by full performance.
28-1-1102. Performance by one of several joint debtors.
28-1-1103. Performance to one of several joint creditors.
28-1-1104. Extinction when directions of creditor followed.
28-1-1105. When partial performance extinguishes part of obligation.
28-1-1106. Application of performance when there are several obligations.
28-1-1107 through 28-1-1110 reserved.
28-1-1111. Receipt for money, instrument, or property delivered.
28-1-1112. Objections to tender — waiver.
28-1-1113. Creditor's retention of thing which he refuses to accept.

Part 12 — Extinction of Obligation by Offer of Performance

28-1-1201. When obligation extinguished by offer of performance.
28-1-1202. Effect of offer.
28-1-1203. Offer of partial performance ineffective.
28-1-1204. Who must make offer of performance.
28-1-1205. To whom offer must be made.
28-1-1206. Where offer may be made.
28-1-1207. When offer must be made.
28-1-1208. Offer of late performance with compensation.
28-1-1209. Offer to be made in good faith.
28-1-1210. Offeror to be able and willing to perform.
28-1-1211. When offer may be conditional.
28-1-1212. Objections to mode of offer — waiver.
28-1-1213 through 28-1-1220 reserved.
28-1-1221. Title to thing offered.
28-1-1222. Production of thing to be delivered.
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Part 13 — Prevention of Performance

28-1-1301. When delay or failure to perform or offer to perform excused.
28-1-1302. Effect when performance prevented by creditor.
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Part 14 — Accord and Satisfaction

28-1-1401. Accord — definition and effect.
28-1-1402. Satisfaction — definition and effect.
28-1-1403. When part performance extinguishes obligation.

Part 15 — Novation

28-1-1501. Novation defined.
28-1-1502. Kinds of novation.
28-1-1503. How novation accomplished.
28-1-1504. When acceptance of novation may be rescinded.

Part 16 — Release of Debtor by Creditor

28-1-1601. Extinction of obligation by a release.

28-1-1602. What claims survive general release.
28-1-1603. Effect of release of some but not all joint debtors.

Chapter Cross-References

Definition of terms relating to obligations and transactions, 1-1-206.

What ought to have been done, 1-3-220.

Reasonableness, 1-3-233.

Obligation defined, 27-1-105.

Limitation of damages for breach of obligation, 27-1-303.

Breach of obligation to pay money, 27-1-312.

Breach of obligation other than contract, 27-1-317.

Actions based on contract or other obligation, 27-2-202.

Credit transactions, Title 31, ch. 1.

Debtor and creditor relationships, Title 31, ch. 2.

Part 1

General Provisions

28-1-101. Definitions. (1) An obligation is a legal duty by which a person is bound to do or not to do a certain thing.

(2) Performance of an obligation for the delivery of money only is called payment.

History: En. Secs. 1920, 2005, Civ. C. 1895; re-en. Secs. 4892, 4927, Rev. C. 1907; re-en. Secs. 7394, 7429, R.C.M. 1921; Cal. Civ. C. Secs. 1427, 1478; Field Civ. C. Secs. 670, 704; re-en. Secs. 7394, 7429, R.C.M. 1935; R.C.M. 1947, 58-101, 58-406.

Cross-References

Obligation defined, 27-1-105.

Contract defined, 28-2-101.

28-1-102. How obligations arise. An obligation arises either from:

(1) the contract of the parties; or

(2) the operation of law.

History: En. Sec. 1921, Civ. C. 1895; re-en. Sec. 4893, Rev. C. 1907; re-en. Sec. 7395, R.C.M. 1921; Cal. Civ. C. Sec. 1428; Based on Field Civ. C. Sec. 671; re-en. Sec. 7395, R.C.M. 1935; R.C.M. 1947, 58-102(part).

Cross-References

Obligation defined, 27-1-105.

Contract defined, 28-2-101.

28-1-103. What rules govern interpretation of contracts and other obligations. The rules which govern the interpretation of contracts are prescribed by this title and Title 1. Other obligations are interpreted by the same rules by which statutes of a similar nature are interpreted.

History: En. Sec. 1930, Civ. C. 1895; re-en. Sec. 4894, Rev. C. 1907; re-en. Sec. 7396, R.C.M. 1921; Cal. Civ. C. Sec. 1429; Field Civ. C. Sec. 672; re-en. Sec. 7396, R.C.M. 1935; R.C.M. 1947, 58-103; amd. Sec. 1, Ch. 117, L. 1979.

Cross-References

Terms relating to obligations and transactions, 1-1-206.

Statutory construction, Title 1, ch. 2.

Interpretation of instruments, Title 1, ch. 4.

Executed versus executory contracts, 28-2-104.

How contract extinguished, 28-2-1701.

Interpretation giving effect to contract favored, 28-3-201.

Effect to be given to every part of contract, 28-3-202.

When several contracts taken together, 28-3-203.

How repugnancies reconciled, 28-3-204.

Written or original terms to control printed terms, 28-3-205.

Uncertainty to be resolved against party causing it, 28-3-206.

Interpretation to give effect to mutual intention, 28-3-301.

Interpretation of terms that are ambiguous or were intended in a different sense by different parties, 28-3-306.

Extent to which language governs interpretation, 28-3-401.
Interpretation of words, Title 28, ch. 3, part 5.
Interpretation of contract of suretyship, 28-11-403.
U.C.C. — general definitions and principles of interpretation, Title 30, ch. 1, part 2.

28-1-104. Relief from forfeiture. Whenever by the terms of an obligation a party thereto incurs a forfeiture or a loss in the nature of a forfeiture by reason of his failure to comply with its provisions, he may be relieved therefrom upon making full compensation to the other party, except in case of a grossly negligent, willful, or fraudulent breach of duty.

History: En. Sec. 4261, Civ. C. 1895; re-en. Sec. 6039, Rev. C. 1907; re-en. Sec. 8658, R.C.M. 1921; Cal. Civ. C. Sec. 3275; re-en. Sec. 8658, R.C.M. 1935; R.C.M. 1947, 17-102.

Cross-References
Definition of negligence and willfully, 1-1-204.
Fraud, 28-2-404 through 28-2-406.

Part 2

Obligations Imposed by Law

28-1-201. General duty of care. Every person is bound, without contract, to abstain from injuring the person or property of another or infringing upon any of his rights.

History: En. Sec. 2290, Civ. C. 1895; re-en. Sec. 5071, Rev. C. 1907; re-en. Sec. 7573, R.C.M. 1921; Cal. Civ. C. Sec. 1708; Field Civ. C. Sec. 847; re-en. Sec. 7573, R.C.M. 1935; R.C.M. 1947, 58-601.

Cross-References
Declaration of rights, Art. II, Mont. Const.
Negligence defined, 1-1-204.
Limit on rights, 1-3-205.
Injury defined, 27-1-106.
Right to compensatory damages, 27-1-202.
Liability for negligence as well as willful acts, 27-1-701.

28-1-202. Obligation of one who unilaterally decides to render service. One who officiously and without the consent of the real or apparent owner of a thing takes it into his possession for the purpose of rendering service about it must complete such service and use ordinary care, diligence, and reasonable skill about the same. He is not entitled to any compensation for his service or expenses, except that he may deduct actual and necessary expenses incurred by him about such service from any profits which his service has caused the thing to acquire for its owner and must account to the owner for the residue.

History: En. Sec. 2760, Civ. C. 1895; re-en. Sec. 5295, Rev. C. 1907; re-en. Sec. 7810, R.C.M. 1921; Cal. Civ. C. Sec. 2078; Field Civ. C. Sec. 1083; re-en. Sec. 7810, R.C.M. 1935; R.C.M. 1947, 41-501.

Cross-References
Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.
Immunity of persons donating food for free distribution, 27-1-716.
Creditor's retention of thing which he refuses to accept, 28-1-1113.
Contracts for personal services limited to 2 years, 28-2-722.
Gratuitous deposits, Title 70, ch. 6, part 3.

28-1-203. Enforcement of obligations arising by operation of law. An obligation arising from operation of law may be enforced by civil action or proceeding or in the manner provided by law.

History: En. Sec. 1921, Civ. C. 1895; re-en. Sec. 4893, Rev. C. 1907; re-en. Sec. 7395, R.C.M. 1921; Cal. Civ. C. Sec. 1428; Based on Field Civ. C. Sec. 671; re-en. Sec. 7395, R.C.M. 1935; R.C.M. 1947, 58-102(part).

Cross-References

Rules incorporated into statutes, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20), Rule 52(c), M.R.App.P. (see Title 25, ch. 21).

Obligations which cannot be specifically enforced, 27-1-412.

Canceled dealership contracts — repurchase requirements, Title 30, ch. 11, part 7.

Termination, cancellation, nonrenewal, or substantial alteration of farm implements dealership agreements, Title 30, ch. 11, part 8.

28-1-204 through 28-1-210 reserved.

28-1-211. Implied covenant of good faith and fair dealing. The conduct required by the implied covenant of good faith and fair dealing is honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

History: En. Sec. 1, Ch. 571, L. 1987.

Part 3

Joint Obligations

Part Cross-References

Liability of joint debtors, Title 25, ch. 15.

Multiple defendants jointly and severally liable, 27-1-703.

Nature of partner's liability, 35-10-307.

28-1-301. Types of obligations involving several persons. Except as provided in 27-1-703, an obligation imposed upon several persons or a right created in favor of several persons may be:

(1) joint;
(2) several; or
(3) joint and several.

History: En. Sec. 1940, Civ. C. 1895; re-en. Sec. 4895, Rev. C. 1907; re-en. Sec. 7397, R.C.M. 1921; Cal. Civ. C. Sec. 1430; Field Civ. C. Sec. 673; re-en. Sec. 7397, R.C.M. 1935; R.C.M. 1947, 58-201; amd. Sec. 2, Ch. 253, L. 1987.

Compiler's Comments

1987 Amendment: At beginning inserted exception clause.

Cross-References

Performance by one of several joint debtors, 28-1-1102.

Performance to one of several joint creditors, 28-1-1103.

28-1-302. Joint obligations and covenants to be taken as joint and several. Except as provided in 27-1-703, after March 1, 1895, all joint obligations and covenants shall be taken and held to be joint and several obligations and covenants.

History: En. Sec. 1941, Civ. C. 1895; re-en. Sec. 4896, Rev. C. 1907; re-en. Sec. 4896, Rev. C. 1907; re-en. Sec. 7398, R.C.M. 1921; Cal. Civ. C. Sec. 1431; re-en. Sec. 7398, R.C.M. 1935; R.C.M. 1947, 58-202; amd. Sec. 3, Ch. 253, L. 1987.

Compiler's Comments

1987 Amendment: At beginning inserted exception clause.

Cross-References

Nature of partner's liability, 35-10-307.

28-1-303. Right to contribution from joint debtors. Except as provided in 27-1-703, a party to a joint or joint and several obligation who satisfies more than his share of the claim against all may require a proportionate contribution from all the parties joined with him.

History: En. Sec. 1942, Civ. C. 1895; re-en. Sec. 4897; Rev. C. 1907; re-en. Sec. 7399, R.C.M. 1921; Cal. Civ. C. Sec. 1432; Field Civ. C. Sec. 675; re-en. Sec. 7399, R.C.M. 1935; R.C.M. 1947, 58-203; amd. Sec. 4, Ch. 253, L. 1987.

Compiler's Comments

1987 Amendment: At beginning inserted exception clause.

Cross-References

Compelling contribution or repayment — joint debtor, surety, 25-13-104.

Effect of discharge — right of contribution, 25-15-202.

Multiple defendants jointly and severally liable — right of contribution, 27-1-703.

Performance by one of several joint debtors, 28-1-1102.

Effect of release of some but not all joint debtors, 28-1-1603.

Part 4

Conditional Obligations

28-1-401. What obligations are conditional. An obligation is conditional when the rights or duties of any party thereto depend upon the occurrence of an uncertain event.

History: En. Sec. 1950, Civ. C. 1895; re-en. Sec. 4898, Rev. C. 1907; re-en. Sec. 7400, R.C.M. 1921; Cal. Civ. C. Sec. 1434; Field Civ. C. Sec. 676; re-en. Sec. 7400, R.C.M. 1935; R.C.M. 1947, 58-204.

Cross-References

Obligation — definition, 28-1-101.

How obligations arise, 28-1-102.

28-1-402. Types of conditions. Conditions may be precedent, concurrent, or subsequent.

History: En. Sec. 1951, Civ. C. 1895; re-en. Sec. 4899, Rev. C. 1907; re-en. Sec. 7401, R.C.M. 1921; Cal. Civ. C. Sec. 1435; Field Civ. C. Sec. 677; re-en. Sec. 7401, R.C.M. 1935; R.C.M. 1947, 58-205.

28-1-403. Condition precedent defined. A condition precedent is one which is to be performed before some right dependent thereon accrues or some act dependent thereon is performed.

History: En. Sec. 1952, Civ. C. 1895; re-en. Sec. 4900, Rev. C. 1907; re-en. Sec. 7402, R.C.M. 1921; Cal. Civ. C. Sec. 1436; Field Civ. C. Sec. 678; re-en. Sec. 7402, R.C.M. 1935; R.C.M. 1947, 58-206.

Cross-References

Conditions precedent, Rule 9(c), M.R.Civ.P. (see Title 25, ch. 20).

Parties who cannot obtain specific performance, 27-1-416.

Condition precedent requiring wrongful act, 70-1-403.

28-1-404. Condition concurrent defined. Conditions concurrent are those which are mutually dependent and are to be performed at the same time.

History: En. Sec. 1953, Civ. C. 1895; re-en. Sec. 4901, Rev. C. 1907; re-en. Sec. 7403, R.C.M. 1921; Cal. Civ. C. Sec. 1437; Field Civ. C. Sec. 679; re-en. Sec. 7403, R.C.M. 1935; R.C.M. 1947, 58-207.

28-1-405. Condition subsequent defined. A condition subsequent is one referring to a future event upon the happening of which the obligation becomes no longer binding upon the other party if he chooses to avail himself of the condition.

History: En. Sec. 1954, Civ. C. 1895; re-en. Sec. 4902, Rev. C. 1907; re-en. Sec. 7404, R.C.M. 1921; Cal. Civ. C. Sec. 1438; Field Civ. C. Sec. 680; re-en. Sec. 7404, R.C.M. 1935; R.C.M. 1947, 58-208.

28-1-406. What conditions must be performed before requiring performance by another. Before any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself and must be able and offer to fulfill all conditions concurrent so imposed upon him on the like fulfillment by the other party, except as provided by 28-1-407.

History: En. Sec. 1955, Civ. C. 1895; re-en. Sec. 4903, Rev. C. 1907; re-en. Sec. 7405, R.C.M. 1921; Cal. Civ. C. Sec. 1439; Field Civ. C. Sec. 681; re-en. Sec. 7405, R.C.M. 1935; R.C.M. 1947, 58-209.

Cross-References

Right to specific performance to be mutual, 27-1-414.

28-1-407. When prior performance of conditions excused. If a party to an obligation gives notice to another, before the latter is in default, that he will not perform the same upon his part and does not retract such notice before the time at which performance upon his part is due, such other party is entitled to enforce the obligation without previously performing or offering to perform any conditions upon his part in favor of the former.

History: En. Sec. 1956, Civ. C. 1895; re-en. Sec. 4904, Rev. C. 1907; re-en. Sec. 7406, R.C.M. 1921; Cal. Civ. C. Sec. 1440; Field Civ. C. Sec. 682; re-en. Sec. 7406, R.C.M. 1935; R.C.M. 1947, 58-210.

Cross-References

Enforcement of obligations arising by operation of law, 28-1-203.

Excuse by failure of presupposed conditions, 30-2-615.

28-1-408. Condition involving forfeiture to be strictly construed. A condition involving a forfeiture must be strictly interpreted against the party for whose benefit it is created.

History: En. Sec. 1958, Civ. C. 1895; re-en. Sec. 4906, Rev. C. 1907; re-en. Sec. 7408, R.C.M. 1921; Cal. Civ. C. Sec. 1442; Field Civ. C. Sec. 684; re-en. Sec. 7408, R.C.M. 1935; R.C.M. 1947, 58-212.

Cross-References

Construction of terms, 1-4-107.

What rules govern interpretation of contracts and other obligations, 28-1-103.

Part 5

Alternative Obligations

28-1-501. Who may select between alternative performances. If an obligation requires the performance of one of two acts in the alternative, the party required to perform has the right of selection unless it is otherwise provided by the terms of the obligation.

History: En. Sec. 1970, Civ. C. 1895; re-en. Sec. 4907, Rev. C. 1907; re-en. Sec. 7409, R.C.M. 1921; Cal. Civ. C. Sec. 1448; Field Civ. C. Sec. 685; re-en. Sec. 7409, R.C.M. 1935; R.C.M. 1947, 58-213.

Cross-References

Interpretation of terms that are ambiguous or were intended in a different sense by different parties, 28-3-306.

U.C.C. — sales — revocation of acceptance in whole or part, 30-2-608.

28-1-502. How right of selection lost. If the party having the right of selection between alternative acts does not give notice of his selection to the other party within the time, if any, fixed by the obligation for that purpose or, if none is so fixed, before the time at which the obligation ought to be performed, the right of selection passes to the other party.

History: En. Sec. 1971, Civ. C. 1895; re-en. Sec. 4908, Rev. C. 1907; re-en. Sec. 7410, R.C.M. 1921; Cal. Civ. C. Sec. 1449; Field Civ. C. Sec. 686; re-en. Sec. 7410, R.C.M. 1935; R.C.M. 1947, 58-214.

Cross-References

Time of performance when not specified, 28-3-601.

U.C.C. — sales — absence of specific time provisions, 30-2-309.

28-1-503. One alternative to be selected in its entirety. The party having the right of selection between alternative acts must select one of them in its entirety and cannot select part of one and part of another without the consent of the other party.

History: **En. Sec. 1972, Civ. C. 1895; re-en. Sec. 4909, Rev. C. 1907; re-en. Sec. 7411, R.C.M. 1921; Cal. Civ. C. Sec. 1450; Field Civ. C. Sec. 687; re-en. Sec. 7411, R.C.M. 1935; R.C.M. 1947, 58-215.**

Cross-References

Offer of partial performance ineffective, 28-1-1203.

28-1-504. When obligation to be interpreted as though a particular alternative did not exist. If one of the alternative acts required by an obligation is such as the law will not enforce or becomes unlawful or impossible of performance, the obligation is to be interpreted as though the other or others stood alone.

History: **En. Sec. 1973, Civ. C. 1895; re-en. Sec. 4910, Rev. C. 1907; re-en. Sec. 7412, R.C.M. 1921; Cal. Civ. C. Sec. 1451; Field Civ. C. Sec. 688; re-en. Sec. 7412, R.C.M. 1935; R.C.M. 1947, 58-216; amd. Sec. 2, Ch. 117, L. 1979.**

Cross-References

What rules govern interpretation of contracts and other obligations, 28-1-103.

Illegal objects and provisions, Title 28, ch. 2, part 7.

Parts 6 through 9 reserved

Part 10

Transfer of Rights and Duties Under Obligation

Part Cross-References

Registration of public obligations, Title 17, ch. 5, part 11.

Survival of cause of action or defense — death or disability or transfer of interest, 27-1-501.

Survival of counterclaim — death or assignment, 27-1-502.

What defenses to action survive assignment of right to action, 27-1-503.

U.C.C. — sales, delegation of performance — assignment of rights, 30-2-210.

U.C.C. — sales, power to transfer, 30-2-403.

U.C.C. — commercial paper, transfer and negotiation, Title 30, ch. 3, part 2.

U.C.C. — letters of credit, transfer and assignment, 30-5-116.

U.C.C. — bulk transfers, Title 30, ch. 6.

U.C.C. — investment securities, warranties on presentment and transfer, 30-8-306.

Fiduciary security transfers, Title 30, ch. 10, part 4.

Transfer of property, Title 70, ch. 1, part 5.

28-1-1001. Rights arising out of obligation transferable. A right arising out of an obligation is the property of the person to whom it is due and may be transferred as such.

History: **En. Sec. 1981, Civ. C. 1895; re-en. Sec. 4912, Rev. C. 1907; re-en. Sec. 7414, R.C.M. 1921; Cal. Civ. C. Sec. 1458; Field Civ. C. Sec. 690; re-en. Sec. 7414, R.C.M. 1935; R.C.M. 1947, 58-302.**

Cross-References

Kinds of novation, 28-1-1502.

28-1-1002. When burden of obligation may be transferred. The burden of an obligation may be transferred with the consent of the party entitled to its benefits, but not otherwise, except as provided by Title 70, chapter 17, part 2.

History: En. Sec. 1980, Civ. C. 1895; re-en. Sec. 4911, Rev. C. 1907; re-en. Sec. 7413, R.C.M. 1921; Cal. Civ. C. Sec. 1457; Field Civ. C. Sec. 689; re-en. Sec. 7413, R.C.M. 1935; R.C.M. 1947, 58-301; amd. Sec. 3, Ch. 117, L. 1979.

Cross-References

Kinds of novation, 28-1-1502.

Voluntary transfer — applicability of contract rules, 70-1-502.

Part 11

Extinction of Obligation by Performance

Part Cross-References

U.C.C. — sales — performance, Title 30, ch. 2, part 5.

28-1-1101. Extinction of obligation by full performance. Full performance of an obligation by the party whose duty it is to perform it or by any other person on his behalf and with his assent, if accepted by the creditor, extinguishes it.

History: En. Sec. 2000, Civ. C. 1895; re-en. Sec. 4922, Rev. C. 1907; re-en. Sec. 7424, R.C.M. 1921; Cal. Civ. C. Sec. 1473; Field Civ. C. Sec. 699; re-en. Sec. 7424, R.C.M. 1935; R.C.M. 1947, 58-401.

Cross-References

Specific performance, 27-1-411 through 27-1-421.

Extinction of contracts, 28-2-1701.

28-1-1102. Performance by one of several joint debtors. Performance of an obligation by one of several persons who are jointly liable under it extinguishes the liability of all.

History: En. Sec. 2001, Civ. C. 1895; re-en. Sec. 4923, Rev. C. 1907; re-en. Sec. 7425, R.C.M. 1921; Cal. Civ. C. Sec. 1474; Field Civ. C. Sec. 700; re-en. Sec. 7425, R.C.M. 1935; R.C.M. 1947, 58-402.

Cross-References

Liability of joint debtors, Title 25, ch. 15.

Right to contribution from joint debtors, 28-1-303.

28-1-1103. Performance to one of several joint creditors. An obligation in favor of several persons is extinguished by performance rendered to any of them, except in the case of a deposit made by owners in common or in joint ownership, which is regulated by Title 70, chapter 6.

History: En. Sec. 2002, Civ. C. 1895; re-en. Sec. 4924, Rev. C. 1907; re-en. Sec. 7426, R.C.M. 1921; Cal. Civ. C. Sec. 1475; Field Civ. C. Sec. 701; re-en. Sec. 7426, R.C.M. 1935; R.C.M. 1947, 58-403; amd. Sec. 4, Ch. 117, L. 1979.

Cross-References

Joint obligations, Title 28, ch. 1, part 3.

Creditor defined, 31-2-102.

Relative rights of different creditors, 31-2-105.

28-1-1104. Extinction when directions of creditor followed. If a creditor or any one of two or more joint creditors at any time directs the debtor to perform his obligations in a particular manner, the obligation is extinguished by performance in that manner even though the creditor does not receive the benefit of such performance.

History: En. Sec. 2003, Civ. C. 1895; re-en. Sec. 4925, Rev. C. 1907; re-en. Sec. 7427, R.C.M. 1921; Cal. Civ. C. Sec. 1476; Field Civ. C. Sec. 702; re-en. Sec. 7427, R.C.M. 1935; R.C.M. 1947, 58-404.

28-1-1105. When partial performance extinguishes part of obligation. Partial performance of an indivisible obligation extinguishes a corresponding proportion thereof if the benefit of such performance is voluntarily retained by the creditor, but not otherwise. If such partial performance is of such a nature that the creditor cannot avoid retaining it without injuring his own property, his retention thereof is not presumed to be voluntary.

History: En. Sec. 2004, Civ. C. 1895; re-en. Sec. 4926, Rev. C. 1907; re-en. Sec. 7428, R.C.M. 1921; Cal. Civ. C. Sec. 1477; Field Civ. C. Sec. 703; re-en. Sec. 7428, R.C.M. 1935; R.C.M. 1947, 58-405.

Cross-References

Offer of partial performance ineffective, 28-1-1203.

When part performance extinguishes obligation, 28-1-1403.

Effect of part performance on guarantor's liability, 28-11-216.

U.C.C. — sales — revocation of acceptance in whole or in part, 30-2-608.

28-1-1106. Application of performance when there are several obligations. Whenever a debtor under several obligations to another does an act by way of performance, in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows:

(1) If, at the time of performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation is manifested to the creditor, it must be so applied.

(2) If no such intention or desire is then manifested, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation performance of which was due to him from the debtor at the time of such performance, except that if similar obligations were due to him, both individually and as a trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion. An application once made by the creditor cannot be rescinded without the consent of the debtor.

(3) If application is not made as prescribed in subsection (1) or (2) within the time prescribed, the performance must be applied to the extinction of obligations in the following order and, if there is more than one obligation of a particular class, to the extinction of all in that class, ratably:

(a) first—interest due at the time of the performance;
(b) second—principal due at that time;
(c) third—the obligation earliest in date of maturity;
(d) fourth—an obligation not secured by a lien or collateral undertaking;
(e) fifth—an obligation secured by a lien or collateral undertaking.

History: En. Sec. 2006, Civ. C. 1895; re-en. Sec. 4928, Rev. C. 1907; re-en. Sec. 7430, R.C.M. 1921; Cal. Civ. C. Sec. 1479; Based on Field Civ. C. Sec. 705; re-en. Sec. 7430, R.C.M. 1935; R.C.M. 1947, 58-407; amd. Sec. 5, Ch. 117, L. 1979.

Cross-References

Intention of the parties, Title 28, ch. 3, part 3.

Rules of priority — security interests, Title 30, ch. 9, part 3.

Liens, Title 71, ch. 3.

28-1-1107 through 28-1-1110 reserved.

28-1-1111. Receipt for money, instrument, or property delivered. Whoever pays money or delivers an instrument or property is entitled to a written receipt therefor from the person to whom the payment or delivery is made and may demand a proper signature to such receipt as a condition of the payment or delivery.

History: (1)En. Sec. 3411, C. Civ. Proc. 1895; re-en. Sec. 8037, Rev. C. 1907; re-en. Sec. 10681, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2075; re-en. Sec. 10681, R.C.M. 1935; Sec. 93-2201-2, R.C.M. 1947; (2)En. Sec. 2034, Civ. C. 1895; re-en. Sec. 4943, Rev. C. 1907; re-en. Sec. 7445, R.C.M. 1921; Cal. Civ. C. Sec. 1499; Field Civ. C. Sec. 720; re-en. Sec. 7445, R.C.M. 1935; Sec. 58-422, R.C.M. 1947; R.C.M. 1947, 58-422, 93-2201-2; amd. Sec. 6, Ch. 117, L. 1979.

Cross-References

U.C.C. — sales — when documents deliverable on acceptance — when on payment, 30-2-514.

Warehouse receipts, Title 30, ch. 7.

Notice and receipt of payment for retail installment sales, 31-1-236.

28-1-1112. Objections to tender — waiver. The person to whom a tender is made must at the time specify any objection he may have to the money, instrument, or property or he must be deemed to have waived it; and if the objections be to the amount of money, the terms of the instrument, or the amount or kind of property, he must specify the amount, terms, or kind which he requires or be precluded from objecting afterward.

History: En. Sec. 3412, C. Civ. Proc. 1895; re-en. Sec. 8038, Rev. C. 1907; re-en. Sec. 10682, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2076; re-en. Sec. 10682, R.C.M. 1935; R.C.M. 1947, 93-2201-3.

Cross-References

Manner of seller's tender of delivery, 30-2-503.

U.C.C. — sales — effect of seller's tender — delivery on condition, 30-2-507.

28-1-1113. Creditor's retention of thing which he refuses to accept. If anything is given to a creditor by way of performance, which he refuses to accept as such, he is not bound to return it without demand but, if he retains it, he is a gratuitous depositary thereof.

History: En. Sec. 2040, Civ. C. 1895; re-en. Sec. 4949, Rev. C. 1907; re-en. Sec. 7451, R.C.M. 1921; Cal. Civ. C. Sec. 1505; Field Civ. C. Sec. 726; re-en. Sec. 7451, R.C.M. 1935; R.C.M. 1947, 58-428.

Cross-References

Custody of thing other than money, 28-1-1224.

Effect of refusal to accept performance before offer, 28-1-1304.

U.C.C. — sales — merchant buyer's duties as to rightfully rejected goods, 30-2-603.

Gratuitous deposit, Title 70, ch. 6, part 3.

Part 12

Extinction of Obligation by Offer of Performance

Part Cross-References

U.C.C. — sales — performance, Title 30, ch. 2, part 5.

28-1-1201. When obligation extinguished by offer of performance. An obligation is extinguished by an offer of performance made in conformity to the rules prescribed in this part and with intent to extinguish the obligation.

History: En. Sec. 2020, Civ. C. 1895; re-en. Sec. 4929, Rev. C. 1907; re-en. Sec. 7431, R.C.M. 1921; Cal. Civ. C. Sec. 1485; Field Civ. C. Sec. 706; re-en. Sec. 7431, R.C.M. 1935; R.C.M. 1947, 58-408.

Cross-References

Manner of seller's tender of delivery, 30-2-503.

28-1-1202. Effect of offer. (1) An offer in writing to pay a particular sum of money or to deliver a written instrument or specific personal property is, if not accepted, equivalent to the actual production and tender of the money, instrument, or property.

(2) An offer of payment or other performance duly made stops the running of interest on the obligation and has the same effect upon all incidents of the obligation as a performance thereof, whether or not the title to anything offered is transferred to the creditor.

History: (1)En. Sec. 3410, C. Civ. Proc. 1895; re-en. Sec. 8036, Rev. C. 1907; re-en. Sec. 10680, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2074; re-en. Sec. 10680, R.C.M. 1935; Sec. 93-2201-1, R.C.M. 1947; (2)En. Sec. 2039, Civ. C. 1895; re-en. Sec. 4948, Rev. C. 1907; re-en. Sec. 7450, R.C.M. 1921; Cal. Civ. C. Sec. 1504; Field Civ. C. Sec. 725; re-en. Sec. 7450, R.C.M. 1935; Sec. 58-427, R.C.M. 1947; R.C.M. 1947, 58-427, 93-2201-1; amd. Sec. 7, Ch. 117, L. 1979.

Cross-References

Firm offer, 30-2-205.

Interest rates, Title 31, ch. 1, part 1.

28-1-1203. Offer of partial performance ineffective. An offer of partial performance is of no effect.

History: En. Sec. 2021, Civ. C. 1895; re-en. Sec. 4930, Rev. C. 1907; re-en. Sec. 7432, R.C.M. 1921; Cal. Civ. C. Sec. 1486; Field Civ. C. Sec. 707; re-en. Sec. 7432, R.C.M. 1935; R.C.M. 1947, 58-409.

Cross-References

When partial performance extinguishes part of obligation, 28-1-1105.

When part performance extinguishes obligation, 28-1-1403.

28-1-1204. Who must make offer of performance. An offer of performance must be made by the debtor or by some person on his behalf and with his assent.

History: En. Sec. 2022, Civ. C. 1895; re-en. Sec. 4931, Rev. C. 1907; re-en. Sec. 7433, R.C.M. 1921; Cal. Civ. C. Sec. 1487; Field Civ. C. Sec. 708; re-en. Sec. 7433, R.C.M. 1935; R.C.M. 1947, 58-410.

Cross-References

What acts agent may perform, 28-10-105.

28-1-1205. To whom offer must be made. An offer of performance must be made to the creditor, to any one or more joint creditors, or to a person authorized by one or more of them to receive or collect what is due under the obligation.

History: En. Sec. 2023, Civ. C. 1895; re-en. Sec. 4932, Rev. C. 1907; re-en. Sec. 7434, R.C.M. 1921; Cal. Civ. C. Sec. 1488; Based on Field Civ. C. Sec. 709; re-en. Sec. 7434, R.C.M. 1935; R.C.M. 1947, 58-411; amd. Sec. 8, Ch. 117, L. 1979.

Cross-References

What acts agent may perform, 28-10-105.

28-1-1206. Where offer may be made. In the absence of an express provision to the contrary, an offer of performance may be made, at the option of the debtor:

(1) at any place appointed by the creditor;

(2) wherever the person to whom the offer ought to be made can be found;

(3) if such person cannot, with reasonable diligence, be found within the state and within a reasonable distance from his residence or place of business or if he evades the debtor, then at his residence or place of business if the same can, with reasonable diligence, be found within the state; or

(4) if this cannot be done, then at any place within this state.

History: En. Sec. 2024, Civ. C. 1895; re-en. Sec. 4933, Rev. C. 1907; re-en. Sec. 7435, R.C.M. 1921; Cal. Civ. C. Sec. 1489; Field Civ. C. Sec. 710; re-en. Sec. 7435, R.C.M. 1935; R.C.M. 1947, 58-412.

Cross-References

U.C.C. — sales — absence of specified place for delivery, 30-2-308.

Manner of seller's tender of delivery, 30-2-503.

Corporations, registered office and registered agent, 35-1-305.

28-1-1207. When offer must be made. (1) Where an obligation fixes a time for its performance, an offer of performance must be made at that time, within reasonable hours, and not before or afterwards.

(2) Where an obligation does not fix the time for its performance, an offer of performance may be made at any time before the debtor, upon reasonable demand, has refused to perform.

History: (1)En. Sec. 2025, Civ. C. 1895; re-en. Sec. 4934, Rev. C. 1907; re-en. Sec. 7436, R.C.M. 1921; Cal. Civ. C. Sec. 1490; Field Civ. C. Sec. 711; re-en. Sec. 7436, R.C.M. 1935; Sec. 58-413, R.C.M. 1947; (2)En. Sec. 2026, Civ. C. 1895; re-en. Sec. 4935, Rev. C. 1907; re-en. Sec. 7437, R.C.M. 1921; Cal. Civ. C. Sec. 1491; Field Civ. C. Sec. 712; re-en. Sec. 7437, R.C.M. 1935; Sec. 58-414, R.C.M. 1947; R.C.M. 1947, 58-413, 58-414.

Cross-References

Time of performance when not specified, 28-3-601.

U.C.C. — sales — absence of specific time provisions, 30-2-309.

28-1-1208. Offer of late performance with compensation. Where delay in performance is capable of exact and entire compensation and time has not been expressly declared to be of the essence of the obligation, an offer of performance accompanied with an offer of such compensation may be made at any time after it is due, but without prejudice to any rights acquired by the creditor or by any other person in the meantime.

History: En. Sec. 2027, Civ. C. 1895; re-en. Sec. 4936, Rev. C. 1907; re-en. Sec. 7438, R.C.M. 1921; Cal. Civ. C. Sec. 1492; Field Civ. C. Sec. 713; re-en. Sec. 7438, R.C.M. 1935; R.C.M. 1947, 58-415.

Cross-References

Cure by seller of improper tender or delivery — replacement, 30-2-508.

28-1-1209. Offer to be made in good faith. An offer of performance must be made in good faith and in such manner as is most likely, under the circumstances, to benefit the creditor.

History: En. Sec. 2028, Civ. C. 1895; re-en. Sec. 4937, Rev. C. 1907; re-en. Sec. 7439, R.C.M. 1921; Cal. Civ. C. Sec. 1493; Field Civ. C. Sec. 714; re-en. Sec. 7439, R.C.M. 1935; R.C.M. 1947, 58-416.

Cross-References

U.C.C. — good faith defined, 30-1-201.

Effect of seller's tender — delivery on condition, 30-2-507.

28-1-1210. Offeror to be able and willing to perform. An offer of performance is of no effect if the person making it is not able and willing to perform according to the offer.

History: En. Sec. 2030, Civ. C. 1895; re-en. Sec. 4939, Rev. C. 1907; re-en. Sec. 7441, R.C.M. 1921; Cal. Civ. C. Sec. 1495; Field Civ. C. Sec. 716; re-en. Sec. 7441, R.C.M. 1935; R.C.M. 1947, 58-418.

Cross-References

Effect of seller's tender — delivery on condition, 30-2-507.

Right to adequate assurance of performance, 30-2-609.

28-1-1211. When offer may be conditional. (1) An offer of performance must be free from any conditions which the creditor is not bound, on his part, to perform.

(2) When a debtor is entitled to the performance of a condition precedent to or concurrent with performance on his part, he may make his offer depend upon the due performance of such condition.

History: En. Secs. 2029, 2033, Civ. C. 1895; re-en. Secs. 4938, 4942, Rev. C. 1907; re-en. Secs. 7440, 7444, R.C.M. 1921; Cal. Civ. C. Secs. 1494, 1498; Field Civ. C. Secs. 715, 719; re-en. Secs. 7440, 7444, R.C.M. 1935; R.C.M. 1947, 58-417, 58-421.

Cross-References

Condition precedent, 28-1-403.

Condition concurrent, 28-1-404.

How proposal revoked, 28-2-512.

U.C.C. — title, creditors, and good faith purchasers, Title 30, ch. 2, part 4.

28-1-1212. Objections to mode of offer — waiver. All objections to the mode of an offer of performance which the creditor has an opportunity to state at the time to the person making the offer and which could then be obviated by such person are waived by the creditor if not then stated. If the objection is to the amount of money, the terms of the instrument, or the amount or kind of property offered, the creditor must specify the amount, terms, or kind which he requires.

History: En. Sec. 2036, Civ. C. 1895; re-en. Sec. 4945, Rev. C. 1907; re-en. Sec. 7447, R.C.M. 1921; Cal. Civ. C. Sec. 1501; Field Civ. C. Sec. 722; re-en. Sec. 7447, R.C.M. 1935; R.C.M. 1947, 58-424; amd. Sec. 9, Ch. 117, L. 1979.

Cross-References

Manner of seller's tender of delivery, 30-2-503.

Waiver of buyer's objections by failure to particularize, 30-2-605.

28-1-1213 through 28-1-1220 reserved.

28-1-1221. Title to thing offered. The title to a thing duly offered in performance of an obligation passes to the creditor if the debtor at the time signifies his intention to that effect.

History: En. Sec. 2037, Civ. C. 1895; re-en. Sec. 4946, Rev. C. 1907; re-en. Sec. 7448, R.C.M. 1921; Cal. Civ. C. Sec. 1502; Field Civ. C. Sec. 723; re-en. Sec. 7448, R.C.M. 1935; R.C.M. 1947, 58-425.

Cross-References

Passing of title, 30-2-401.

Manner of seller's tender of delivery, 30-2-503.

28-1-1222. Production of thing to be delivered. The thing to be delivered, if any, need not in any case be actually produced upon an offer of performance unless the offer is accepted.

History: En. Sec. 2031, Civ. C. 1895; re-en. Sec. 4940, Rev. C. 1907; re-en. Sec. 7442, R.C.M. 1921; Cal. Civ. C. Sec. 1496; Field Civ. C. Sec. 717; re-en. Sec. 7442, R.C.M. 1935; R.C.M. 1947, 58-419.

Cross-References
U.C.C. — sales — options and cooperation respecting performance, 30-2-311.

28-1-1223. Thing offered to be kept separate. A thing, when offered by way of performance, must not be mixed with other things from which it cannot be separated immediately and without difficulty.

History: En. Sec. 2032, Civ. C. 1895; re-en. Sec. 4941, Rev. C. 1907; re-en. Sec. 7443, R.C.M. 1921; Cal. Civ. C. Sec. 1497; Field Civ. C. Sec. 718; re-en. Sec. 7443, R.C.M. 1935; R.C.M. 1947, 58-420.

Cross-References
Casualty to identified goods, 30-2-613.

28-1-1224. Custody of thing other than money. The person offering a thing other than money by way of performance must, if he means to treat it as belonging to the creditor, retain it as a depositary for hire until the creditor accepts it or until he has given reasonable notice to the creditor that he will retain it no longer and, if with reasonable diligence he can find a suitable depositary therefor, until he has deposited it with such person.

History: En. Sec. 2038, Civ. C. 1895; re-en. Sec. 4947, Rev. C. 1907; re-en. Sec. 7449, R.C.M. 1921; Cal. Civ. C. Sec. 1503; Field Civ. C. Sec. 724; re-en. Sec. 7449, R.C.M. 1935; R.C.M. 1947, 58-426.

Cross-References
Creditor's retention of thing which he refuses to accept, 28-1-1113.
U.C.C. — sales — merchant buyer's duties as to rightfully rejected goods, 30-2-603.
Buyer's security interest in rejected goods, 30-2-711.
Deposit for hire, Title 70, ch. 6, part 4.

28-1-1225. Deposit of money offered in payment. An obligation for the payment of money is extinguished by a due offer of payment if the amount is immediately deposited in the name of the creditor with some bank of deposit within this state of good repute and notice thereof is given to the creditor.

History: En. Sec. 2035, Civ. C. 1895; re-en. Sec. 4944, Rev. C. 1907; re-en. Sec. 7446, R.C.M. 1921; Cal. Civ. C. Sec. 1500; Field Civ. C. Sec. 721; re-en. Sec. 7446, R.C.M. 1935; R.C.M. 1947, 58-423.

Cross-References
U.C.C. — sales — tender of payment by buyer — payment by check, 30-2-511.
Liquidation or limitation of damages — deposits, 30-2-718.

Part 13

Prevention of Performance

Part Cross-References
U.C.C. — sales — performance, Title 30, ch. 2, part 5.

28-1-1301. When delay or failure to perform or offer to perform excused. The want of performance of an obligation or of an offer of performance, in whole or in part, or any delay therein is excused by the following causes, to the extent to which they operate:

(1) when such performance or offer is prevented or delayed by the act of the creditor or by the operation of law, even though there may have been a stipulation that this shall not be an excuse;

(2) when it is prevented or delayed by an irresistible, superhuman cause or by the act of public enemies of this state or of the United States, unless the parties have expressly agreed to the contrary; or

(3) when the debtor is induced not to make it by any act of the creditor intended or naturally tending to have that effect, done at or before the time at which such performance or offer may be made, and not rescinded before that time.

History: **En. Sec. 2050, Civ. C. 1895; re-en. Sec. 4950, Rev. C. 1907; re-en. Sec. 7452, R.C.M. 1921; Cal. Civ. C. Sec. 1511; Field Civ. C. Sec. 727; re-en. Sec. 7452, R.C.M. 1935; R.C.M. 1947, 58-429.**

Cross-References

Offer of late performance with compensation, 28-1-1208.

Contracts which violate policy of the law — exemption from responsibility, 28-2-702.

Excuse by failure of presupposed conditions, 30-2-615.

28-1-1302. Effect when performance prevented by creditor. If the performance of an obligation be prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties.

History: **En. Sec. 2051, Civ. C. 1895; re-en. Sec. 4951, Rev. C. 1907; re-en. Sec. 7453, R.C.M. 1921; Cal. Civ. C. Sec. 1512; Field Civ. C. Sec. 728; re-en. Sec. 7453, R.C.M. 1935; R.C.M. 1947, 58-430.**

Cross-References

Right to adequate assurance of performance, 30-2-609.

U.C.C. — sales — buyer's remedies in general, 30-2-711.

28-1-1303. Effect when performance prevented by other causes. If full performance of an obligation is prevented by any cause excusing performance other than the act of the creditor, the debtor is entitled to a ratable proportion of the consideration to which he would have been entitled upon full performance, according to the benefit which the creditor receives from the actual performance.

History: **En. Sec. 2052, Civ. C. 1895; re-en. Sec. 4952, Rev. C. 1907; re-en. Sec. 7454, R.C.M. 1921; Cal. Civ. C. Sec. 1514; re-en. Sec. 7454, R.C.M. 1935; R.C.M. 1947, 58-431; amd. Sec. 10, Ch. 117, L. 1979.**

Cross-References

Excuse by failure of presupposed conditions, 30-2-615.

28-1-1304. Effect of refusal to accept performance before offer. A refusal by a creditor to accept performance, made before an offer thereof, is equivalent to an offer and refusal unless, before performance is actually due, he gives notice to the debtor of his willingness to accept it.

History: **En. Sec. 2053, Civ. C. 1895; re-en. Sec. 4953, Rev. C. 1907; re-en. Sec. 7455, R.C.M. 1921; Cal. Civ. C. Sec. 1515; Field Civ. C. Sec. 731; re-en. Sec. 7455, R.C.M. 1935; R.C.M. 1947, 58-432.**

Cross-References

Extinction of obligation by full performance, 28-1-1101.

Creditor's retention of thing which he refuses to accept, 28-1-1113.

Anticipatory repudiation, 30-2-610.

Retraction of anticipatory repudiation, 30-2-611.

Part 14

Accord and Satisfaction

Part Cross-References

Compromise or settlement of a debt by unsealed writing, 1-4-207.

28-1-1401. Accord — definition and effect. An accord is an agreement to accept in extinction of an obligation something different from or less than that to which the person agreeing to accept is entitled. Though the parties to an accord are bound to execute it, yet it does not extinguish the obligation until it is fully executed.

History: Ap. p. Sec. 2060, Civ. C. 1895; re-en. Sec. 4954, Rev. C. 1907; re-en. Sec. 7456, R.C.M. 1921; Cal. Civ. C. Sec. 1521; Based on Field Civ. C. Sec. 732; re-en. Sec. 7456, R.C.M. 1935; Sec. 58-501, R.C.M. 1947; Ap. p. Sec. 2061, Civ. C. 1895; re-en. Sec. 4955, Rev. C. 1907; re-en. Sec. 7457, R.C.M. 1921; Cal. Civ. C. Sec. 1522; Field Civ. C. Sec. 733; re-en. Sec. 7457, R.C.M. 1935; Sec. 58-502, R.C.M. 1947; R.C.M. 1947, 58-501, 58-502.

Cross-References

U.C.C. — sales — substituted performance, 30-2-614.

28-1-1402. Satisfaction — definition and effect. Acceptance by the creditor of the consideration of an accord extinguishes the obligation and is called satisfaction.

History: En. Sec. 2062, Civ. C. 1895; re-en. Sec. 4956, Rev. C. 1907; re-en. Sec. 7458, R.C.M. 1921; Cal. Civ. C. Sec. 1523; Field Civ. C. Sec. 734; re-en. Sec. 7458, R.C.M. 1935; R.C.M. 1947, 58-503.

Cross-References

U.C.C. — sales — substituted performance, 30-2-614.

28-1-1403. When part performance extinguishes obligation. Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in writing in satisfaction or rendered in pursuance of an agreement in writing for that purpose, though without any new consideration, extinguishes the obligation.

History: En. Sec. 2063, Civ. C. 1895; re-en. Sec. 4957, Rev. C. 1907; re-en. Sec. 7459, R.C.M. 1921; Cal. Civ. C. Sec. 1524; re-en. Sec. 7459, R.C.M. 1935; R.C.M. 1947, 58-504.

Cross-References

When partial performance extinguishes part of obligation, 28-1-1105.

Offer of partial performance ineffective, 28-1-1203.

Effect of part performance on guarantor's liability, 28-11-216.

U.C.C. — sales — substituted performance, 30-2-614.

Part 15

Novation

Part Cross-References

Contracts, Title 28, ch. 2.

Interpretation of contracts, Title 28, ch. 3.

28-1-1501. Novation defined. "Novation" is the substitution of a new obligation for an existing one.

History: En. Sec. 2070, Civ. C. 1895; re-en. Sec. 4958, Rev. C. 1907; re-en. Sec. 7460, R.C.M. 1921; Cal. Civ. C. Sec. 1530; Field Civ. C. Sec. 736; re-en. Sec. 7460, R.C.M. 1935; R.C.M. 1947, 58-505.

28-1-1502. Kinds of novation. Novation is made by the substitution of:

(1) a new obligation between the same parties with intent to extinguish the old obligation;

(2) a new debtor in place of the old one with intent to release the latter; or

(3) a new creditor in place of the old one with intent to transfer the rights of the latter to the former.

History: En. Sec. 2071, Civ. C. 1895; re-en. Sec. 4959, Rev. C. 1907; re-en. Sec. 7461, R.C.M. 1921; Cal. Civ. C. Sec. 1531; Field Civ. C. Sec. 737; re-en. Sec. 7461, R.C.M. 1935; R.C.M. 1947, 58-506.

Cross-References

One alternative to be selected in its entirety, 28-1-503.

Rights arising out of obligation transferable, 28-1-1001.

When burden of obligation may be transferred, 28-1-1002.

U.C.C. — sales — delegation of performance — assignment of rights, 30-2-210.

28-1-1503. How novation accomplished. Novation is made by contract and is subject to all the rules concerning contracts in general.

History: En. Sec. 2072, Civ. C. 1895; re-en. Sec. 4960, Rev. C. 1907; re-en. Sec. 7462, R.C.M. 1921; Cal. Civ. C. Sec. 1532; Field Civ. C. Sec. 738; re-en. Sec. 7462, R.C.M. 1935; R.C.M. 1947, 58-507.

Cross-References

What rules govern interpretation of contracts and other obligations, 28-1-103.

How contract extinguished, 28-2-1701.

28-1-1504. When acceptance of novation may be rescinded. When the obligation of a third person or an order upon such person is accepted in satisfaction, the creditor may rescind such acceptance if:

(1) the debtor prevents such person from complying with the order or from fulfilling the obligation;

(2) at the time the obligation or order is received, such person is insolvent and the fact is unknown to the creditor; or

(3) before the creditor can, with reasonable diligence, present the order to the person upon whom it is given, he becomes insolvent.

History: En. Sec. 2073, Civ. C. 1895; re-en. Sec. 4961, Rev. C. 1907; re-en. Sec. 7463, R.C.M. 1921; Cal. Civ. C. Sec. 1533; Based on Field Civ. C. Sec. 740; re-en. Sec. 7463, R.C.M. 1935; R.C.M. 1947, 58-508.

Cross-References

How rescission accomplished, 28-2-1713.

Modification, rescission and waiver, 30-2-209.

Part 16

Release of Debtor by Creditor

28-1-1601. Extinction of obligation by a release. An obligation is extinguished by a release therefrom given to the debtor by the creditor upon a new consideration or in writing, with or without new consideration.

History: En. Sec. 2080, Civ. C. 1895; re-en. Sec. 4962, Rev. C. 1907; re-en. Sec. 7464, R.C.M. 1921; Cal. Civ. C. Sec. 1541; Based on Field Civ. C. Sec. 741; re-en. Sec. 7464, R.C.M. 1935; R.C.M. 1947, 58-509.

Cross-References

Discharge of one joint debtor, 25-15-201.

28-1-1602. What claims survive general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him, must have materially affected his settlement with the debtor.

History: **En. Sec. 2081, Civ. C. 1895; re-en. Sec. 4963, Rev. C. 1907; re-en. Sec. 7465, R.C.M. 1921; Cal. Civ. C. Sec. 1542; Based on Field Civ. C. Sec. 742; re-en. Sec. 7465, R.C.M. 1935; R.C.M. 1947, 58-510.**

Cross-References

Mistake, 28-2-408 through 28-2-411.

28-1-1603. Effect of release of some but not all joint debtors. A release of one of two or more joint debtors does not extinguish the obligation of any of the others unless they are mere guarantors, nor does it affect their rights to contribution from him.

History: **En. Sec. 2082, Civ. C. 1895; re-en. Sec. 4964, Rev. C. 1907; re-en. Sec. 7466, R.C.M. 1921; Cal. Civ. C. Sec. 1543; Field Civ. C. Sec. 743; re-en. Sec. 7466, R.C.M. 1935; R.C.M. 1947, 58-511.**

Cross-References

Discharge of joint debtor, Title 25, ch. 15, part 2.

Multiple defendants jointly and severally liable — right of contribution, 27-1-703.

Joint obligations, Title 28, ch. 1, part 3.

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28-2-101. Contract defined. A contract is an agreement to do or not to do a certain thing.

History: En. Sec. 2090, Civ. C. 1895; re-en. Sec. 4965, Rev. C. 1907; re-en. Sec. 7467, R.C.M. 1921; Cal. Civ. C. Sec. 1549; Field Civ. C. Sec. 744; re-en. Sec. 7467, R.C.M. 1935; R.C.M. 1947, 13-101.

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How liens created, 71-3-102.

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28-2-102. Essential elements of a contract. It is essential to the existence of a contract that there be:

(1) identifiable parties capable of contracting;

(2) their consent;

(3) a lawful object; and

(4) a sufficient cause or consideration.

History: En. Secs. 2091, 2102, Civ. C. 1895; re-en. Secs. 4966, 4969, Rev. C. 1907; re-en. Secs. 7468, 7471, R.C.M. 1921; Cal. Civ. C. Secs. 1550, 1558; Field Civ. C. Secs. 745, 748; re-en. Secs. 7468, 7471, R.C.M. 1935; R.C.M. 1947, 13-102, 13-203; amd. Sec. 11, Ch. 117, L. 1979.

Cross-References

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What is unlawful, 28-2-701.

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Requirements of retail installment contracts, 31-1-231.

Employment agency — required contents of contract, 39-5-302.

Minors — power to contract, Title 41, ch. 1, part 3.

28-2-103. Express versus implied contracts. A contract is either express or implied. An express contract is one the terms of which are stated in words. An implied contract is one the existence and terms of which are manifested by conduct.

History: En. Secs. 2180, 2181, 2182, Civ. C. 1895; re-en. Secs. 5012, 5013, 5014, Rev. C. 1907; re-en. Secs. 7514, 7515, 7516, R.C.M. 1921; Cal. Civ. C. Secs. 1619, 1620, 1621; Field Civ. C. Secs. 789, 790, 791; re-en. Secs. 7514, 7515, 7516, R.C.M. 1935; R.C.M. 1947, 13-601, 13-602, 13-603.

Cross-References

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Formation in general, U.C.C. contracts, 30-2-204.

U.C.C. — sales contracts — course of performance or practical construction, 30-2-208.

28-2-104. Executed versus executory contracts. An executed contract is one the object of which is fully performed. All others are executory.

History: En. Sec. 2226, Civ. C. 1895; re-en. Sec. 5050, Rev. C. 1907; re-en. Sec. 7552, R.C.M. 1921; Cal. Civ. C. Sec. 1661; Field Civ. C. Sec. 826; re-en. Sec. 7552, R.C.M. 1935; R.C.M. 1947, 13-727.

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Contracts of marriage — parts of code not applicable, 40-1-106.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Discrimination in credit transactions, 49-2-403.

28-2-201. Who may contract. All persons are capable of contracting except minors, persons of unsound mind, and persons deprived of civil rights. Minors and persons of unsound mind have only such capacity as is defined by this part, 28-10-104, and Title 41, chapter 1.

History: En. Secs. 2100, 2101, Civ. C. 1895; re-en. Secs. 4967, 4968, Rev. C. 1907; re-en. Secs. 7469, 7470, R.C.M. 1921; Cal. Civ. C. Secs. 1556, 1557; Field Civ. C. Secs. 746, 747; re-en. Secs. 7469, 7470, R.C.M. 1935; R.C.M. 1947, 13-201, 13-202; amd. Sec. 12, Ch. 117, L. 1979.

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Municipal contracts, Title 7, ch. 5, part 43.

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Reclamation contracts by Board of Land Commissioners, 82-4-239, 82-4-403.

Department of Commerce — contracts for planning and economic development programs, 90-1-107.

28-2-202. Contracts of persons entirely without understanding. A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family.

History: En. Sec. 21, Civ. C. 1895; re-en. Sec. 3595, Rev. C. 1907; re-en. Sec. 5683, R.C.M. 1921; Cal. Civ. C. Sec. 38; re-en. Sec. 5683, R.C.M. 1935; re-en. Sec. 5683, R.C.M. 1935; R.C.M. 1947, 64-110.

Cross-References

Capacity, Rule 9(a), M.R.Civ.P. (see Title 25, ch. 20).

How proposal revoked — mental illness, 28-2-512.

Support of spouse, 40-2-103.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Specific limits on justification for discrimination — age or mental handicap, 49-2-403.

Mentally ill, Title 53, ch. 21.

28-2-203. Contracts of persons with limited understanding. A conveyance or other contract of a person of unsound mind but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission as provided in part 17 of this chapter.

History: En. Sec. 22, Civ. C. 1895; re-en. Sec. 3596, Rev. C. 1907; re-en. Sec. 5684, R.C.M. 1921; Cal. Civ. C. Sec. 39; Field Civ. C. Sec. 21; re-en. Sec. 5684, R.C.M. 1935; R.C.M. 1947, 64-111.

Cross-References

Capacity, Rule 9(a), M.R.Civ.P. (see Title 25, ch. 20).

How proposal revoked — mental illness, 28-2-512.

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U.C.C. — sales — modification, rescission, and waiver, 30-2-209.

Specific limits on justification for discrimination — age or mental handicap, 49-2-403.

Mentally ill, Title 53, ch. 21.

28-2-204. When person of unsound mind cannot disaffirm contract. A person of unsound mind cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

History: En. Sec. 19, Civ. C. 1895; re-en. Sec. 3593, Rev. C. 1907; re-en. Sec. 5681, R.C.M. 1921; Cal. Civ. C. Sec. 36; Field Civ. C. Sec. 18; re-en. Sec. 5681, R.C.M. 1935; R.C.M. 1947, 64-108(part).

Cross-References

How proposal revoked — mental illness, 28-2-512.

When party may rescind, 28-2-1711.

Support of spouse, 40-2-103.

Liability for acts or debts of spouse, 40-2-106.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Specific limits on justification for discrimination — age or mental handicap, 49-2-403.

Mentally ill, Title 53, ch. 21.

28-2-205. When contract for benefit of third person may be enforced by him. A contract made expressly for the benefit of a third person may be enforced by him at any time before the parties thereto rescind it.

History: En. Sec. 2103, Civ. C. 1895; re-en. Sec. 4970, Rev. C. 1907; re-en. Sec. 7472, R.C.M. 1921; Cal. Civ. C. Sec. 1559; Field Civ. C. Sec. 749; re-en. Sec. 7472, R.C.M. 1935; R.C.M. 1947, 13-204.

Cross-References

Rescission, Title 28, ch. 2, part 17.

U.C.C. — sales — modification, rescission, and waiver, 30-2-209.

Delegation of performance — assignment of rights, 30-2-210.

28-2-206. Assignment of nonnegotiable written contract. A nonnegotiable written contract for the payment of money or the delivery of personal property may be transferred by endorsement the same as a negotiable instrument. Such endorsement transfers all the rights of the assignor under the contract to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the endorsement or arising before notice of the assignment is received by him.

History: **En. Sec. 1982, Civ. C. 1895; re-en. Sec. 4913, Rev. C. 1907; re-en. Sec. 7415, R.C.M. 1921; Cal. Civ. C. Sec. 1459; re-en. Sec. 7415, R.C.M. 1935; R.C.M. 1947, 58-303; amd. Sec. 13, Ch. 117, L. 1979.**

Cross-References

Survival of cause of action or defense — death or disability or transfer of interest, 27-1-501.

Survival of counterclaim — death or assignment, 27-1-502.

What defenses to action survive assignment of right to action, 27-1-503.

Delegation of performance — assignment of rights, 30-2-210.

U.C.C. — commercial paper, transfer and negotiation, Title 30, ch. 3, part 2.

Exemption from execution of proceeds of annuity contracts — assignability of rights, 33-15-514.

Part 3

Consent in General

28-2-301. Essential characteristics of consent. The consent of the parties to a contract must be:

(1) free;

(2) mutual; and

(3) communicated by each to the other.

History: **En. Sec. 2110, Civ. C. 1895; re-en. Sec. 4971, Rev. C. 1907; re-en. Sec. 7473, R.C.M. 1921; Cal. Civ. C. Sec. 1565; Field Civ. C. Sec. 750; re-en. Sec. 7473, R.C.M. 1935; R.C.M. 1947, 13-301.**

Cross-References

How novation accomplished, 28-1-1503.

Formation in general — U.C.C. sales, 30-2-204.

28-2-302. Effect of consent which is not free. A consent which is not free is nevertheless not absolutely void but may be rescinded by the parties in the manner prescribed by part 17 of this chapter.

History: **En. Sec. 2111, Civ. C. 1895; re-en. Sec. 4972, Rev. C. 1907; re-en. Sec. 7474, R.C.M. 1921; Cal. Civ. C. Sec. 1566; Field Civ. C. Sec. 751; re-en. Sec. 7474, R.C.M. 1935; R.C.M. 1947, 13-302.**

Cross-References

When party may rescind, 28-2-1711.

U.C.C. — sales — modification, rescission, and waiver, 30-2-209.

28-2-303. When consent is mutual. Consent is not mutual unless the parties all agree upon the same thing in the same sense, but in certain cases defined by chapter 3, they are to be deemed so to agree without regard to the fact.

History: **En. Sec. 2125, Civ. C. 1895; re-en. Sec. 4986, Rev. C. 1907; re-en. Sec. 7488, R.C.M. 1921; Cal. Civ. C. Sec. 1580; Field Civ. C. Sec. 765; re-en. Sec. 7488, R.C.M. 1935; R.C.M. 1947, 13-316.**

Cross-References

Offer and acceptance in formation of contract, 30-2-206.

28-2-304. Ratification of contract void for want of consent. A contract which is voidable solely for want of due consent may be ratified by a subsequent consent.

History: **En. Sec. 2133, Civ. C. 1895; re-en. Sec. 4994, Rev. C. 1907; re-en. Sec. 7496, R.C.M. 1921; Cal. Civ. C. Sec. 1588; Field Civ. C. Sec. 773; re-en. Sec. 7496, R.C.M. 1935; R.C.M. 1947, 13-324.**

Cross-References

Essential elements of a contract, 28-2-102.

Agency — ratification, 28-10-211 through 28-10-215.

Part 4

Circumstances Which Affect Validity of Apparent Consent

Part Cross-References

Parties who cannot be compelled to perform, 27-1-415.

28-2-401. When apparent consent not free. (1) An apparent consent is not real or free when obtained through:

(a) duress;

(b) menace;

(c) fraud;

(d) undue influence; or

(e) mistake.

(2) Consent is deemed to have been obtained through one of the causes mentioned in subsection (1) only when it would not have been given had such cause not existed.

History: En. Secs. 2112, 2113, Civ. C. 1895; re-en. Secs. 4973, 4974, Rev. C. 1907; re-en. Secs. 7475, 7476, R.C.M. 1921; Cal. Civ. C. Secs. 1567, 1568; Field Civ. C. Secs. 752, 753; re-en. Secs. 7475, 7476, R.C.M. 1935; R.C.M. 1947, 13-303, 13-304.

28-2-402. What constitutes duress. Duress consists in:

(1) unlawful confinement of the person of the party, of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife;

(2) unlawful detention of the property of any such person; or

(3) confinement of such person, lawful in form but fraudulently obtained or fraudulently made unjustly harassing or oppressive.

History: En. Sec. 2114, Civ. C. 1895; re-en. Sec. 4975, Rev. C. 1907; re-en. Sec. 7477, R.C.M. 1921; Cal. Civ. C. Sec. 1569; Field Civ. C. Sec. 754; re-en. Sec. 7477, R.C.M. 1935; R.C.M. 1947, 13-305.

Cross-References

When party may rescind, 28-2-1711.

Burdens in contested will cases, 72-3-310.

Certificate to be attached when will found valid, 72-12-204.

28-2-403. What constitutes menace. Menace consists in a threat of:

(1) such duress as is specified in subsections (1) and (3) of 28-2-402;

(2) unlawful and violent injury to the person or property of any such person in circumstances described in 28-2-402; or

(3) injury to the character of any such person.

History: En. Sec. 2115, Civ. C. 1895; re-en. Sec. 4976, Rev. C. 1907; re-en. Sec. 7478, R.C.M. 1921; Cal. Civ. C. Sec. 1570; Field Civ. C. Sec. 755; re-en. Sec. 7478, R.C.M. 1935; R.C.M. 1947, 13-306; amd. Sec. 14, Ch. 117, L. 1979.

Cross-References

Libel and slander, Title 27, ch. 1, part 8.

When party may rescind, 28-2-1711.

28-2-404. Kinds of fraud. Fraud is either actual or constructive. Actual fraud is always a question of fact.

History: En. Secs. 2116, 2119, Civ. C. 1895; re-en. Secs. 4977, 4980, Rev. C. 1907; re-en. Secs. 7479, 7482, R.C.M. 1921; Cal. Civ. C. Secs. 1571, 1574; Field Civ. C. Secs. 756, 759; re-en. Secs. 7479, 7482, R.C.M. 1935; R.C.M. 1947, 13-307, 13-310.

Cross-References

Issues of fact, 25-7-101, 25-7-103.

Fraud, mistake, condition of the mind, Rule 9(b), M.R.Civ.P. (see Title 25, ch. 20).

Right to damages for fraud preserved, 27-1-602.

Liability for damages for deceit, 27-1-712.

Action for relief on ground of fraud or mistake, 27-2-203.

When party may rescind, 28-2-1711.

When stipulation against rescission tive, 28-2-1712.

Remedies for fraud, 30-2-721.

Fraudulent financing of mining and oil companies, Title 30, ch. 14, part 7.

Deceptive practices, 45-6-317.

Deceptive business practices, 45-6-318.

Involuntary trust — fraud, mistake, wrongful act, 72-20-111.

Violation of trust obligations as fraud, 72-20-207.

28-2-405. What constitutes actual fraud. Actual fraud, within the meaning of this part, consists in any of the following acts committed by a party to the contract or with his connivance with intent to deceive another party thereto or to induce him to enter into the contract:

(1) the suggestion as a fact of that which is not true by one who does not believe it to be true;

(2) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(3) the suppression of that which is true by one having knowledge or belief of the fact;

(4) a promise made without any intention of performing it; or

(5) any other act fitted to deceive.

History: En. Sec. 2117, Civ. C. 1895; re-en. Sec. 4978, Rev. C. 1907; re-en. Sec. 7480, R.C.M. 1921; Cal. Civ. C. Sec. 1572; Field Civ. C. Sec. 757; re-en. Sec. 7480, R.C.M. 1935; R.C.M. 1947, 13-308.

Cross-References

When party may rescind, 28-2-1711.

When stipulation against rescission ineffective, 28-2-1712.

Fraudulent conveyances, Title 31, ch. 2, part 3.

28-2-406. What constitutes constructive fraud. Constructive fraud consists in:

(1) any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault or anyone claiming under him by misleading another to his prejudice or to the prejudice of anyone claiming under him; or

(2) any such act or omission as the law especially declares to be fraudulent, without respect to actual fraud.

History: En. Sec. 2118, Civ. C. 1895; re-en. Sec. 4979, Rev. C. 1907; re-en. Sec. 7481, R.C.M. 1921; Cal. Civ. C. Sec. 1573; Field Civ. C. Sec. 758; re-en. Sec. 7481, R.C.M. 1935; R.C.M. 1947, 13-309.

Cross-References

When party may rescind, 28-2-1711.

When stipulation against rescission ineffective, 28-2-1712.

Fraudulent conveyances, Title 31, ch. 2, part 3.

28-2-407. What constitutes undue influence. Undue influence consists in:

(1) the use by one in whom a confidence is reposed by another or who holds a real or apparent authority over him of such confidence or authority for the purpose of obtaining an unfair advantage over him;

(2) taking an unfair advantage of another's weakness of mind; or

(3) taking a grossly oppressive and unfair advantage of another's necessities or distress.

History: En. Sec. 2120, Civ. C. 1895; re-en. Sec. 4981, Rev. C. 1907; re-en. Sec. 7483, R.C.M. 1921; Cal. Civ. C. Sec. 1575; Field Civ. C. Sec. 760; re-en. Sec. 7483, R.C.M. 1935; R.C.M. 1947, 13-311.

Cross-References

Undue influence of voters, 13-35-218.

Illegal election practices — undue influence, 13-36-210.

When party may rescind, 28-2-1711.

Self-proved will, no undue influence, 72-2-304.

Burden in contested will cases, 72-3-310.

Certificate to be attached if will found valid, 72-12-204.

Involuntary trust arising from undue influence, 72-20-111.

Presumption against trustees, 72-20-208.

28-2-408. Kinds of mistake. Mistake may be either of fact or law.

History: En. Sec. 2121, Civ. C. 1895; re-en. Sec. 4982, Rev. C. 1907; re-en. Sec. 7484, R.C.M. 1921; Cal. Civ. C. Sec. 1576; Field Civ. C. Sec. 761; re-en. Sec. 7484, R.C.M. 1935; R.C.M. 1947, 13-312.

Cross-References

Fraud, mistake, condition of the mind, Rule 9(b), M.R.Civ.P. (see Title 25, ch. 20).

Actions for relief on ground of fraud or mistake, 27-2-203.

28-2-409. What constitutes mistake of fact. Mistake of fact is a mistake not caused by the neglect of a legal duty on the part of the person making the mistake and consisting in:

(1) an unconscious ignorance or forgetfulness of a fact, past or present, material to the contract; or

(2) belief in the present existence of a thing material to the contract which does not exist or in the past existence of such a thing which has not existed.

History: En. Sec. 2122, Civ. C. 1895; re-en. Sec. 4983, Rev. C. 1907; re-en. Sec. 7485, R.C.M. 1921; Cal. Civ. C. Sec. 1577; Field Civ. C. Sec. 762; re-en. Sec. 7485, R.C.M. 1935; R.C.M. 1947, 13-313.

Cross-References

When party may rescind, 28-2-1711.

When stipulation against rescission ineffective, 28-2-1712.

28-2-410. What constitutes mistake of law. Mistake of law constitutes a mistake, within the meaning of this part, only when it arises from:

(1) a misapprehension of the law by all parties, all supposing that they knew and understood it and all making substantially the same mistake as to the law; or

(2) a misapprehension of the law by one party of which the others are aware at the time of contracting but which they do not rectify.

History: En. Sec. 2123, Civ. C. 1895; re-en. Sec. 4984, Rev. C. 1907; re-en. Sec. 7486, R.C.M. 1921; Cal. Civ. C. Sec. 1578; Field Civ. C. Sec. 763; re-en. Sec. 7486, R.C.M. 1935; R.C.M. 1947, 13-314.

Cross-References

Meaning of law, Title 1, ch. 1, part 1.

When party may rescind, 28-2-1711.

When stipulation against rescission ineffective, 28-2-1712.

28-2-411. Mistake of foreign laws — mistake of fact. Mistake of foreign laws is a mistake of fact.

History: En. Sec. 2124, Civ. C. 1895; re-en. Sec. 4985, Rev. C. 1907; re-en. Sec. 7487, R.C.M. 1921; Cal. Civ. C. Sec. 1579; Field Civ. C. Sec. 764; re-en. Sec. 7487, R.C.M. 1935; R.C.M. 1947, 13-315.

Cross-References
When party may rescind, 28-2-1711.
When stipulation against rescission ineffective, 28-2-1712.

Part 5

Communication of Consent — Revocation of Proposal

Part Cross-References
Discrimination in credit transactions, 49-2-403.

28-2-501. How consent is communicated. (1) Consent can be communicated with effect only by some act or omission of the party contracting by which he intends to communicate it or which necessarily tends to such communication.

(2) If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases, any reasonable and usual mode in conformity with subsection (1) may be adopted.

History: En. Secs. 2126, 2127, Civ. C. 1895; re-en. Secs. 4987, 4988, Rev. C. 1907; re-en. Secs. 7489, 7490, R.C.M. 1921; Cal. Civ. C. Secs. 1581, 1582; Field Civ. C. Secs. 766, 767; re-en. Secs. 7489, 7490, R.C.M. 1935; R.C.M. 1947, 13-317, 13-318; amd. Sec. 15, Ch. 117, L. 1979.

Cross-References
Offer and acceptance in formation of contract, 30-2-206.

28-2-502. When consent is considered fully communicated. Consent is considered to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer in conformity with 28-2-501.

History: En. Sec. 2128, Civ. C. 1895; re-en. Sec. 4989, Rev. C. 1907; re-en. Sec. 7491, R.C.M. 1921; Cal. Civ. C. Sec. 1583; Field Civ. C. Sec. 768; re-en. Sec. 7491, R.C.M. 1935; R.C.M. 1947, 13-319; amd. Sec. 16, Ch. 117, L. 1979.

28-2-503. Implied acceptance. (1) Performance of the conditions of a proposal or the acceptance of the consideration offered with a proposal is an acceptance of the proposal.

(2) A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known or ought to be known to the person accepting.

History: En. Secs. 2129, 2134, Civ. C. 1895; re-en. Secs. 4990, 4995, Rev. C. 1907; re-en. Secs. 7492, 7497, R.C.M. 1921; Cal. Civ. C. Secs. 1584, 1589; Field Civ. C. Secs. 769, 774; re-en. Secs. 7492, 7497, R.C.M. 1935; R.C.M. 1947, 13-320, 13-325.

Cross-References
Offer and acceptance in formation of contract, 30-2-206.

28-2-504. Acceptance to be absolute. An acceptance must be absolute and unqualified or must include in itself an acceptance of that character which the proposer can separate from the rest and which will bind the person accepting. A qualified acceptance is a new proposal.

History: En. Sec. 2130, Civ. C. 1895; re-en. Sec. 4991, Rev. C. 1907; re-en. Sec. 7493, R.C.M. 1921; Cal. Civ. C. Sec. 1585; Field Civ. C. Sec. 770; re-en. Sec. 7493, R.C.M. 1935; R.C.M. 1947, 13-321; amd. Sec. 17, Ch. 117, L. 1979.

Cross-References
Additional terms in acceptance or confirmation, 30-2-207.

28-2-505 through 28-2-510 reserved.

28-2-511. When proposal may be revoked. A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards.

History: En. Sec. 2131, Civ. C. 1895; re-en. Sec. 4992, Rev. C. 1907; re-en. Sec. 7494, R.C.M. 1921; Cal. Civ. C. Sec. 1586; Field Civ. C. Sec. 771; re-en. Sec. 7494, R.C.M. 1935; R.C.M. 1947, 13-322.

Cross-References
Modification, rescission and waiver, 30-2-209.

28-2-512. How proposal revoked. A proposal is revoked by:

(1) the communication of notice of revocation by the proposer to the other party in the manner prescribed by 28-2-501 and 28-2-502 before his acceptance has been communicated to the former;

(2) the lapse of the time prescribed in such proposal for its acceptance or, if no time is so prescribed, the lapse of a reasonable time without communication of the acceptance;

(3) the failure of the acceptor to fulfill a condition precedent to acceptance; or

(4) the death or serious mental illness of the proposer.

History: En. Sec. 2132, Civ. C. 1895; re-en. Sec. 4993, Rev. C. 1907; re-en. Sec. 7495, R.C.M. 1921; Cal. Civ. C. Sec. 1587; Field Civ. C. Sec. 772; re-en. Sec. 7495, R.C.M. 1935; R.C.M. 1947, 13-323; amd. Sec. 18, Ch. 117, L. 1979.

Cross-References
When offer may be conditional, 28-1-1211.
Who may contract, 28-2-201.
Contracts of persons entirely without understanding, 28-2-202.
Contracts of persons with limited understanding, 28-2-203.
When person of unsound mind cannot disaffirm contract, 28-2-204.

Part 6

Object of a Contract

Part Cross-References
Agreements for payment of federal sums in lieu of taxes, Title 17, ch. 3, part 3.
Contract for city-county library, 22-1-315, 22-1-316.
What may be the subject of a contract, 30-11-107.

28-2-601. Object of contract defined. The object of a contract is the thing which it is agreed on the part of the party receiving the consideration to do or not to do.

History: En. Sec. 2150, Civ. C. 1895; re-en. Sec. 4996, Rev. C. 1907; re-en. Sec. 7498, R.C.M. 1921; Cal. Civ. C. Sec. 1595; Field Civ. C. Sec. 775; re-en. Sec. 7498, R.C.M. 1935; R.C.M. 1947, 13-401.

Cross-References
Contract defined, 28-2-101.
Illegality of agreement to allow another person to confess judgment, accept service of process, or accept default, 28-2-709.
Definition of a contract — U.C.C., 30-1-201.
Firm offers, 30-2-205.
Employment agency contract to be approved by department, 39-5-303.

28-2-602. Essential characteristics of object. The object of the contract must be lawful when the contract is made and possible and ascertainable by the time the contract is to be performed. Everything is deemed possible except that which is impossible in the nature of things.

History: En. Secs. 2151, 2152, Civ. C. 1895; re-en. Secs. 4997, 4998, Rev. C. 1907; re-en. Secs. 7499, 7500, R.C.M. 1921; Cal. Civ. C. Secs. 1596, 1597; Field Civ. C. Secs. 776, 777; re-en. Secs. 7499, 7500, R.C.M. 1935; R.C.M. 1947, 13-402, 13-403.

Cross-References

Prevention of performance, Title 28, ch. 1, part 13.

What is unlawful, 28-2-701.

28-2-603. When contract wholly void. Where a contract has but a single object and such object is unlawful, whether in whole or in part, or wholly impossible of performance or so vaguely expressed as to be wholly unascertainable, the entire contract is void.

History: En. Sec. 2153, Civ. C. 1895; re-en. Sec. 4999, Rev. C. 1907; re-en. Sec. 7501, R.C.M. 1921; Cal. Civ. C. Sec. 1598; Field Civ. C. Sec. 778; re-en. Sec. 7501, R.C.M. 1935; R.C.M. 1947, 13-404.

Cross-References

Regulation of cigarette marketing — illegal contracts, 16-10-302.

Effect of impossibility of designated exclusive method of determination, 28-2-814.

Unconscionable contract or clause, 30-2-302.

Contract discharging employer liability for negligence void, 39-2-705.

Prohibited provisions in rental agreements, 70-24-202.

28-2-604. When contract partially void. Where a contract has several distinct objects of which one at least is lawful and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest.

History: En. Sec. 2154, Civ. C. 1895; re-en. Sec. 5000, Rev. C. 1907; re-en. Sec. 7502, R.C.M. 1921; Cal. Civ. C. Sec. 1599; Field Civ. C. Sec. 779; re-en. Sec. 7502, R.C.M. 1935; R.C.M. 1947, 13-405.

Cross-References

Unconscionable contract or clause, 30-2-302.

Part 7

Illegal Objects and Provisions

Part Cross-References

Community college district trustees — no pecuniary interest in letting contracts, 20-15-104.

Parties who cannot be compelled to specifically perform, 27-1-415.

Cause of action for breach of promise abolished — right to damages for fraud and unjust enrichment preserved, 27-1-602.

Agreements settling or compromising abolished causes of action, 27-1-605.

Unconscionable contract or clause, 30-2-302.

Recovery on illegal contracts forbidden, 30-14-219.

Prohibited provisions in rental agreements, 70-24-202.

Certain contracts void, 71-3-109.

28-2-701. What is unlawful. That is not lawful which is:

(1) contrary to an express provision of law;

(2) contrary to the policy of express law, though not expressly prohibited; or

(3) otherwise contrary to good morals.

History: En. Sec. 2240, Civ. C. 1895; re-en. Sec. 5051, Rev. C. 1907; re-en. Sec. 7553, R.C.M. 1921; Cal. Civ. C. Sec. 1667; Field Civ. C. Sec. 827; re-en. Sec. 7553, R.C.M. 1935; R.C.M. 1947, 13-801.

Cross-References
Object of contract defined, 28-2-601.
Consideration to be lawful — effect of illegality, 28-2-803.

28-2-702. Contracts which violate policy of the law — exemption from responsibility. All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, for willful injury to the person or property of another, or for violation of law, whether willful or negligent, are against the policy of the law.

History: En. Sec. 2241, Civ. C. 1895; re-en. Sec. 5052, Rev. C. 1907; re-en. Sec. 7554, R.C.M. 1921; Cal. Civ. C. Sec. 1668; Field Civ. C. Sec. 828; re-en. Sec. 7554, R.C.M. 1935; R.C.M. 1947, 13-802.

Cross-References
Liability for negligence as well as willful acts, 27-1-701.
U.C.C. — sales — contractual modification or limitation of remedy, 30-2-719.
Contract discharging employer liability for negligence void, 39-2-705.
Wage protection — contracts in violation of part void, 39-3-208.
Prohibited provisions in rental agreements, 70-24-202.

28-2-703. Contracts in restraint of trade generally void. Any contract by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, otherwise than is provided for by 28-2-704 or 28-2-705, is to that extent void.

History: En. Sec. 2246, Civ. C. 1895; re-en. Sec. 5057, Rev. C. 1907; re-en. Sec. 7559, R.C.M. 1921; Cal. Civ. C. Sec. 1673; Field Civ. C. Sec. 833; re-en. Sec. 7559, R.C.M. 1935; R.C.M. 1947, 13-807.

Cross-References
Special corporate privileges — franchises or immunities prohibited, Art. II, sec. 31, Mont. Const.
Unlawful practices — trade, 30-14-103.
Unlawful restraint of trade, 30-14-205.
Recovery on illegal contracts forbidden, 30-14-219.
Deceptive practices, 45-6-317.
Deceptive business practices, 45-6-318.

28-2-704. Exception — sale of goodwill of business. (1) One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business within the areas provided in subsection (2) so long as the buyer or any person deriving title to the goodwill from him carries on a like business therein.

(2) The agreement authorized in subsection (1) may apply in:

(a) the city where the principal office of the business is located;

(b) the county where the principal office of the business is located;

(c) a city in any county adjacent to the county in which the principal office of the business is located;

(d) any county adjacent to the county in which the principal office of the business is located; or

(e) any combination of the foregoing.

History: En. Sec. 2247, Civ. C. 1895; re-en. Sec. 5058, Rev. C. 1907; re-en. Sec. 7560, R.C.M. 1921; Cal. Civ. C. Sec. 1674; Field Civ. C. Sec. 834; re-en. Sec. 7560, R.C.M. 1935; R.C.M. 1947, 13-808; amd. Sec. 1, Ch. 432, L. 1983.

Cross-References
Warranty on sale of goodwill, 30-11-221.
Sale of assets not in regular course of business — shareholder approval — with or without goodwill, 35-1-809.
Rules for determining existence of a partnership — no inference from receipt from sale of goodwill, 35-10-202.

28-2-705. Exception — dissolution of partnership. Partners may, upon dissolution of the partnership, agree that one or more of them may not carry on a similar business within the areas provided in 28-2-704(2).

History: En. Sec. 2248, Civ. C. 1895; re-en. Sec. 5059, Rev. C. 1907; re-en. Sec. 7561, R.C.M. 1921; Cal. Civ. C. Sec. 1675; Field Civ. C. Sec. 835; re-en. Sec. 7561, R.C.M. 1935; R.C.M. 1947, 13-809; amd. Sec. 2, Ch. 432, L. 1983.

Cross-References

Rules for determining existence of a partnership — no inference from receipt from sale of goodwill, 35-10-202.

Dissolution and winding up of partnership, Title 35, ch. 10, part 6.

28-2-706. Contracts in restraint of marriage generally void. Every contract in restraint of the marriage of any person other than a minor is void.

History: En. Sec. 2249, Civ. C. 1895; re-en. Sec. 5060, Rev. C. 1907; re-en. Sec. 7562, R.C.M. 1921; Cal. Civ. C. Sec. 1676; Field Civ. C. Sec. 836; re-en. Sec. 7562, R.C.M. 1935; R.C.M. 1947, 13-810.

Cross-References

Obligations which cannot be specifically enforced, 27-1-412.

Marriage, Title 40, ch. 1.

28-2-707. What conditions void. A condition in a contract the fulfillment of which is impossible or unlawful within the meaning of part 6 and this part or which is repugnant to the nature of the interest created by the contract is void.

History: En. Sec. 1957, Civ. C. 1895; re-en. Sec. 4905, Rev. C. 1907; re-en. Sec. 7407, R.C.M. 1921; Cal. Civ. C. Sec. 1441; Field Civ. C. Sec. 683; re-en. Sec. 7407, R.C.M. 1935; R.C.M. 1947, 58-211; amd. Sec. 19, Ch. 117, L. 1979.

Cross-References

Parties who cannot be compelled to specifically perform, 27-1-415.

What deemed impossibility in contract, 28-2-602.

Unconscionable contract or clause, 30-2-302.

28-2-708. Restraints upon legal proceedings void. Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the contract by the usual proceedings in the ordinary tribunals or which limits the time within which he may thus enforce his rights is void. This section does not affect the validity of an agreement enforceable under Title 27, chapter 5.

History: En. Sec. 2245, Civ. C. 1895; re-en. Sec. 5056, Rev. C. 1907; re-en. Sec. 7558, R.C.M. 1921; Field Civ. C. Sec. 832; re-en. Sec. 7558, R.C.M. 1935; R.C.M. 1947, 13-806; amd. Sec. 24, Ch. 684, L. 1985.

Cross-References

Obligations which cannot be specifically enforced, 27-1-412.

Arbitration, Title 27, ch. 5.

U.C.C. — sales — contractual modification or limitation of remedy, 30-2-719.

28-2-709. Illegality of agreement to allow another person to confess judgment, accept service of process, or accept default. (1) No contract in writing by which any promise to pay money is created shall contain any provision either empowering any person to enter judgment by confession against any party to the contract or empowering any person as the agent of any party to the contract to either confess judgment, accept service of process, or consent on behalf of such party to the entry of his default in any proceeding in court upon such contract. Every such provision in any such contract shall be illegal and void and shall be unenforceable in the courts of this state against any party to such contract.

(2) The term "contract", as used in this section, shall include all writings executed contemporaneously with and constituting a part of the same transaction, whether such writings be negotiable or nonnegotiable in form.

History: **En. Sec. 1, Ch. 197, L. 1935; re-en. Sec. 7562.1, R.C.M. 1935; R.C.M. 1947, 13-811.**

Cross-References

When and in what courts judgment may be confessed, 27-9-101.

What acts agent may perform, 28-10-105.

Delegation of performance — assignment of rights, 30-2-210.

Definition of retail installment contract, 31-1-202.

28-2-710 through 28-2-720 reserved.

28-2-721. When provision fixing liquidated damages valid. (1) Every contract by which the amount of damage to be paid or other compensation to be made for a breach of an obligation is determined in anticipation thereof is to that extent void, except as expressly provided in subsection (2).

(2) The parties to a contract may agree therein upon an amount which shall be presumed to be an amount of damage sustained by a breach thereof when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage.

History: **En. Secs. 2243, 2244, Civ. C. 1895; re-en. Secs. 5054, 5055, Rev. C. 1907; re-en. Secs. 7556, 7557, R.C.M. 1921; Cal. Civ. C. Secs. 1670, 1671; Field Civ. C. Secs. 830, 831; re-en. Secs. 7556, 7557, R.C.M. 1935; R.C.M. 1947, 13-804, 13-805.**

Cross-References

Damages — breach of contract, 27-1-311.

Liquidation or limitation of damages — deposits, 30-2-718.

Contractual modification or limitation of remedy, 30-2-719.

28-2-722. Contracts for personal services limited to two years. A contract to render personal services cannot be enforced against the employee beyond the term of 2 years from the commencement of service under it, but if the employee voluntarily continues his service under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.

History: **En. Sec. 2675, Civ. C. 1895; re-en. Sec. 5258, Rev. C. 1907; re-en. Sec. 7773, R.C.M. 1921; Cal. Civ. C. Sec. 1980; Field Civ. C. Sec. 1013; re-en. Sec. 7773, R.C.M. 1935; R.C.M. 1947, 41-206; amd. Sec. 20, Ch. 117, L. 1979.**

Cross-References

Obligation of one who unilaterally decides to render service, 28-1-202.

Employment defined, 39-2-101.

Term of hiring, 39-2-602.

Part 8

Consideration

28-2-801. What constitutes good consideration. Any benefit conferred or agreed to be conferred upon the promisor by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered or agreed to be suffered by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor is a good consideration for a promise.

History: **En. Sec. 2160, Civ. C. 1895; re-en. Sec. 5001, Rev. C. 1907; re-en. Sec. 7503, R.C.M. 1921; Cal. Civ. C. Sec. 1605; Field Civ. C. Sec. 780; re-en. Sec. 7503, R.C.M. 1935; R.C.M. 1947, 13-501.**

Cross-References

Parties who cannot be compelled to perform, 27-1-415.

Essential elements of a contract, 28-2-102.

U.C.C. — sales, formation of contract in general, 30-2-204.

U.C.C. — sales, offer and acceptance in formation of contract, 30-2-206.

U.C.C. — commercial paper, consideration as a defense, 30-3-408.

28-2-802. Extent to which existing legal or moral obligation is good consideration. An existing legal obligation resting upon the promisor, a moral obligation originating in some benefit conferred upon the promisor, or prejudice suffered by the promisee is also a good consideration for a promise to an extent corresponding with the extent of the obligation, but no further or otherwise.

History: En. Sec. 2161, Civ. C. 1895; re-en. Sec. 5002, Rev. C. 1907; re-en. Sec. 7504, R.C.M. 1921; Cal. Civ. C. Sec. 1606; Field Civ. C. Sec. 781; re-en. Sec. 7504, R.C.M. 1935; R.C.M. 1947, 13-502.

Cross-References

How obligations arise, 28-1-102.

Liability for acts or debts of spouse, 40-2-106.

Minor cannot disaffirm contract for necessaries, 41-1-305.

28-2-803. Consideration to be lawful — effect of illegality. The consideration of a contract must be lawful within the meaning of 28-2-701. If any part of a single consideration for one or more objects or of several considerations for a single object is unlawful, the entire contract is void.

History: En. Secs. 2162, 2163, Civ. C. 1895; re-en. Secs. 5003, 5004, Rev. C. 1907; re-en. Secs. 7505, 7506, R.C.M. 1921; Cal. Civ. C. Secs. 1607, 1608; Field Civ. C. Secs. 782, 783; re-en. Sec. 7505, 7506, R.C.M. 1935; R.C.M. 1947, 13-503, 13-504.

Cross-References

What is unlawful, 28-2-701.

28-2-804. Written instrument presumptive evidence of consideration. A written instrument is presumptive evidence of a consideration.

History: En. Sec. 2169, Civ. C. 1895; re-en. Sec. 5010, Rev. C. 1907; re-en. Sec. 7512, R.C.M. 1921; Cal. Civ. C. Sec. 1614; re-en. Sec. 7512, R.C.M. 1935; R.C.M. 1947, 13-510.

Cross-References

Presumption of consideration — conclusive or rebuttable, 26-1-601, 26-1-602.

Formal requirements, Statute of Frauds, 30-2-201.

Final written expression — parol or extrinsic evidence, 30-2-202.

28-2-805. Burden of proof of want of consideration. The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

History: En. Sec. 2170, Civ. C. 1895; re-en. Sec. 5011, Rev. C. 1907; re-en. Sec. 7513, R.C.M. 1921; Cal. Civ. C. Sec. 1615; re-en. Sec. 7513, R.C.M. 1935; R.C.M. 1947, 13-511.

Cross-References

Who has burden of persuasion, 26-1-402.

Presumption of consideration — conclusive or rebuttable, 26-1-601, 26-1-602.

28-2-806 through 28-2-810 reserved.

28-2-811. Applicability of rules concerning object to executory consideration. A consideration may be executed or executory, in whole or in part. Insofar as it is executory, it is subject to the provisions of part 6 of this chapter.

History: En. Sec. 2164, Civ. C. 1895; re-en. Sec. 5005, Rev. C. 1907; re-en. Sec. 7507, R.C.M. 1921; Cal. Civ. C. Sec. 1609; Field Civ. C. Sec. 784; re-en. Sec. 7507, R.C.M. 1935; R.C.M. 1947, 13-505.

Cross-References
Executed versus executory contracts, 28-2-104.

28-2-812. How amount of executory consideration may be determined. When a consideration is executory, it is not indispensable that the contract should specify its amount or the means of ascertaining it. It may be left to the decision of a third person or regulated by any specified standard.

History: En. Sec. 2165, Civ. C. 1895; re-en. Sec. 5006, Rev. C. 1907; re-en. Sec. 7508, R.C.M. 1921; Cal. Civ. C. Sec. 1610; Field Civ. C. Sec. 785; re-en. Sec. 7508, R.C.M. 1935; R.C.M. 1947, 13-506.

Cross-References
Presumption of consideration — conclusive or rebuttable, 26-1-601, 26-1-602.

28-2-813. Determination by interested party. When a contract does not determine the amount of the consideration or the method by which it is to be ascertained or when it leaves the amount thereof to the discretion of an interested party, the consideration must be so much money as the object of the contract is reasonably worth.

History: En. Sec. 2166, Civ. C. 1895; re-en. Sec. 5007, Rev. C. 1907; re-en. Sec. 7509, R.C.M. 1921; Cal. Civ. C. Sec. 1611; Field Civ. C. Sec. 786; re-en. Sec. 7509, R.C.M. 1935; R.C.M. 1947, 13-507.

28-2-814. Effect of impossibility of designated exclusive method of determination. (1) Where a contract provides an exclusive method by which its consideration is to be ascertained, which method is on its face impossible of execution, the entire contract is void.

(2) Where a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on its face but in fact is or becomes impossible of execution, such provision only is void.

History: En. Secs. 2167, 2168, Civ. C. 1895; re-en. Secs. 5008, 5009, Rev. C. 1907; re-en. Secs. 7510, 7511, R.C.M. 1921; Cal. Civ. C. Secs. 1612, 1613; Field Civ. C. Secs. 787, 788; re-en. Secs. 7510, 7511, R.C.M. 1935; R.C.M. 1947, 13-508, 13-509.

Cross-References
When contract wholly void, 28-2-603.
When contract partially void, 28-2-604.
Impossible conditions, 28-2-707.

Part 9

Written Contracts

Part Cross-References
Contents of writings, Art. X, Montana Rules of Evidence (see Title 26, ch. 10).
Formal requirements — Statute of Frauds, 30-2-201.
Final written expression — parol or extrinsic evidence, 30-2-202.
Real property sales, 30-11-111.
Plain Language in Contracts Act, Title 30, ch. 14, part 11.
Requirements of retail installment contracts, 31-1-231.

28-2-901. When contracts may be oral. All contracts may be oral except such as are specially required by statute to be in writing.

History: En. Sec. 2183, Civ. C. 1895; re-en. Sec. 5015, Rev. C. 1907; re-en. Sec. 7517, R.C.M. 1921; Cal. Civ. C. Sec. 1622; Field Civ. C. Sec. 792; re-en. Sec. 7517, R.C.M. 1935; R.C.M. 1947, 13-604.

Cross-References

When guaranty considered original obligation and need not be in writing, 28-11-105.

28-2-902. Enforcement of contract not in writing through fraud. Where a contract which is required by law to be in writing is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing and acts upon such belief to his prejudice may enforce it against the fraudulent party.

History: En. Sec. 2184, Civ. C. 1895; re-en. Sec. 5016, Rev. C. 1907; re-en. Sec. 7518, R.C.M. 1921; Cal. Civ. C. Sec. 1623; Field Civ. C. Sec. 793; re-en. Sec. 7518, R.C.M. 1935; R.C.M. 1947, 13-605.

Cross-References

Fraud, 28-2-404 through 28-2-406.

U.C.C. — sales — remedies for fraud, 30-2-721.

28-2-903. What contracts must be in writing. (1) The following agreements are invalid unless the same or some note or memorandum thereof is in writing and subscribed by the party to be charged or his agent:

(a) an agreement that by its terms is not to be performed within a year from the making thereof;

(b) a special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in 28-11-105;

(c) an agreement made upon consideration of marriage other than a mutual promise to marry;

(d) an agreement for the leasing for a longer period than 1 year or for the sale of real property or of an interest therein. Such agreement, if made by an agent of the party sought to be charged, is invalid unless the authority of the agent is in writing and subscribed by the party sought to be charged.

(e) an agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission.

(2) Evidence of an agreement described in (a) through (d) of subsection (1) is not admissible without the writing or secondary evidence of its contents.

(3) No evidence is admissible to charge a person upon a representation as to the credit of a third person unless such representation or some memorandum thereof is in writing and either subscribed by or in the handwriting of the party to be charged.

(4) Subsections (1) and (2) do not apply to agreements subject to the Uniform Commercial Code.

History: (1)Subds. a to c; en. Secs. 12 to 14, p. 494, Bannack Stat.; re-en. Secs. 12 to 14, pp. 393, 394, Cod. Stat. 1871; re-en. Secs. 166 to 168, 5th Div. Rev. Stat. 1879; re-en. Secs. 223 to 225, 5th Div. Comp. Stat. 1887; amd. Sec. 2185, Civ. C. 1895; re-en. Sec. 5017, Rev. C. 1907; Subd. d; en. Sec. 8., p. 493, Bannack Stat.; re-en. Sec. 8, p. 393, Cod. Stat. 1871; re-en. Sec. 162, 5th Div. Rev. Stat. 1879; re-en. Sec. 219, 5th Div. Comp. Stat. 1887; amd. Sec. 2185, Civ. C. 1895; re-en. Sec. 5017, Rev. C. 1907; Subd. e; en. Sec. 2185, Civ. C. 1895; re-en. Sec. 5017, Rev. C. 1907; all subdivisions re-en. Sec. 7519, R.C.M. 1921; Cal. Civ. C. Sec. 1624; re-en. Sec. 7519, R.C.M. 1935; amd. Sec. 11-110, Ch. 264, L. 1963; Sec. 13-606, R.C.M. 1947; (2), (4)En. Sec. 3276, C. Civ. Proc. 1895; re-en. Sec. 7969, Rev. C. 1907; re-en. Sec. 10613, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1973; re-en. Sec. 10613, R.C.M. 1935; amd. Sec. 11-171, Ch. 264, L. 1963; Sec. 93-1401-7, R.C.M. 1947; (3)En. Sec. 3277, C. Civ. Proc. 1895; re-en. Sec. 7970, Rev. C. 1907; re-en. Sec. 10614, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1974; re-en. Sec. 10614, R.C.M. 1935; Sec. 93-1401-8, R.C.M. 1947; R.C.M. 1947, 13-606, 93-1401-7, 93-1401-8; amd. Sec. 21, Ch. 117, L. 1979.

Cross-References

Agency — when written authorization necessary, 28-10-203.

Authority of agents to be in writing, 28-10-203.

Guaranty generally to be in writing — form, 28-11-104, 30-3-416.

Promise to answer for debt of another, 28-11-105.

Statute of Frauds for kinds of personal property not otherwise covered, 30-1-206.

Formal requirements — Statute of Frauds, 30-2-201.

U.C.C. — letters of credit, Title 30, ch. 5.

Statute of Frauds — securities, 30-8-319.

Enforceability of security interest, 30-9-203.

Contract for sale of real property — covenants, 30-11-109, 30-11-111.

Auctioneer's memorandum — sufficiency, 30-11-504.

Variation from legal interest rate, 31-1-106.

Retail installment contracts, 31-1-231.

Assignment for the benefit of creditors, 31-2-210.

Insurance policy must contain entire contract, 33-15-302.

When contract in writing is binding on mining partnership, 35-13-201.

Marriage settlement contracts, 40-2-312.

Notice to purchaser of property under contract for deed, 70-20-115.

Lease of city lot for over 75 years void, 70-26-110.

Power of attorney to execute mortgage, 71-1-102.

Mortgage of real property, Title 71, ch. 1, part 2.

28-2-904. Effect of written contract on oral agreements. The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument.

History: En. Sec. 2186, Civ. C. 1895; re-en. Sec. 5018, Rev. C. 1907; re-en. Sec. 7520, R.C.M. 1921; Cal. Civ. C. Sec. 1625; Field Civ. C. Sec. 795; re-en. Sec. 7520, R.C.M. 1935; R.C.M. 1947, 13-607.

Cross-References

Consideration of circumstances surrounding execution, 1-4-102.

Final written expression — parol or extrinsic evidence, 30-2-202.

28-2-905. When extrinsic evidence concerning a written agreement may be considered. (1) Whenever the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms. Therefore, there can be between the parties and their representatives or successors in interest no evidence of the terms of the agreement other than the contents of the writing except in the following cases:

(a) when a mistake or imperfection of the writing is put in issue by the pleadings;

(b) when the validity of the agreement is the fact in dispute.

(2) This section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as described in 1-4-102, or other evidence to explain an extrinsic ambiguity or to establish illegality or fraud.

(3) The term "agreement", for the purposes of this section, includes deeds and wills as well as contracts between parties.

History: En. Sec. 610, p. 198, L. 1877; re-en. Sec. 610, 1st Div. Rev. Stat. 1879; re-en. Sec. 628, 1st Div. Comp. Stat. 1887; re-en. Sec. 3132, C. Civ. Proc. 1895; re-en. Sec. 7873, Rev. C. 1907; re-en. Sec. 10517, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1856; re-en. Sec. 10517, R.C.M. 1935; R.C.M. 1947, 93-401-13; amd. Sec. 22, Ch. 117, L. 1979.

Cross-References

Consideration of circumstances surrounding execution, 1-4-102.

Fraud, mistake, condition of the mind, Rule 9(b), M.R.Civ.P. (see Title 25, ch. 20).

Uncertainty to be resolved against party causing it, 28-3-206.

Interpretation of terms that are ambiguous or were intended in a different sense by different parties, 28-3-306.

Reference to circumstances permissible, 28-3-402.

Final written expression — parol or extrinsic evidence, 30-2-202.

28-2-906. When written contract takes effect. A contract in writing takes effect upon its delivery to the party in whose favor it is made or to his agent.

History: En. Sec. 2187, Civ. C. 1895; re-en. Sec. 5019, Rev. C. 1907; re-en. Sec. 7521, R.C.M. 1921; Cal. Civ. C. Sec. 1626; Field Civ. C. Sec. 796; re-en. Sec. 7521, R.C.M. 1935; R.C.M. 1947, 13-608.

Cross-References

Formation in general — U.C.C. — sales, 30-2-204.

Offer and acceptance in formation of contract, 30-2-206.

28-2-907. Applicability of rules concerning transfers in general. The provisions of Title 70, chapter 1, part 5, and 70-20-110 concerning the delivery of grants, absolute and conditional, apply to all written contracts.

History: En. Sec. 2188, Civ. C. 1895; re-en. Sec. 5020, Rev. C. 1907; re-en. Sec. 7522, R.C.M. 1921; Cal. Civ. C. Sec. 1627; Field Civ. C. Sec. 797; re-en. Sec. 7522, R.C.M. 1935; R.C.M. 1947, 13-609.

Cross-References

U.C.C. — sales — power to transfer, 30-2-403.

U.C.C. — sales — performance, Title 30, ch. 2, part 5.

Parts 10 through 14 reserved

Part 15

Enforcement of Contracts

Part Cross-References

Postsecondary educational institutions — enforceability of notes and contracts, 20-30-402.

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Specific and preventive relief, Title 27, ch. 1, part 4.

Removal of corporate officers — no effect on contract rights, 35-1-411.

Corporation transacting business without certificate — effect on contracts, 35-1-1004.

Effect of corporate merger on contract rights, 35-15-505.

28-2-1501. When successive actions on same contract permitted. Successive actions may be maintained upon the same contract or transaction whenever after the former action a new cause of action arises therefrom.

History: En. Sec. 426, p. 130, Bannack Stat.; re-en. Sec. 496, p. 232, L. 1867; re-en. Sec. 20, p. 30, Cod. Stat. 1871; rep. Sec. 674, p. 215, L. 1877; re-en. Sec. 1893, C. Civ. Proc. 1895; re-en. Sec. 7186, Rev. C. 1907; re-en. Sec. 9819, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1047; re-en. Sec. 9819, R.C.M. 1935; R.C.M. 1947, 93-8704.

Part 16

Modification of Contracts

Part Cross-References

Specific and preventive relief, Title 27, ch. 1, part 4.

When final injunction may be granted to prevent breach of obligation, 27-19-102.

Modification, rescission and waiver, U.C.C. — sales, 30-2-209.

Refinancing retail installment contract, 31-1-243.

28-2-1601. Alteration of oral contract by parties. A contract not in writing may be altered in any respect by consent of the parties in writing without a new consideration and is extinguished thereby to the extent of the new alteration.

History: **En. Sec. 2280, Civ. C. 1895; re-en. Sec. 5066, Rev. C. 1907; re-en. Sec. 7568, R.C.M. 1921; Cal. Civ. C. Sec. 1697; Based on Field Civ. C. Sec. 842; re-en. Sec. 7568, R.C.M. 1935; R.C.M. 1947, 13-906.**

Cross-References

When contracts may be oral, 28-2-901.

Course of dealing and usage of trade, 30-1-205.

Modification, rescission and waiver, 30-2-209.

28-2-1602. How written contract may be altered by parties. A contract in writing may be altered by a contract in writing or by an executed oral agreement, and not otherwise.

History: **En. Sec. 2281, Civ. C. 1895; re-en. Sec. 5067, Rev. C. 1907; re-en. Sec. 7569, R.C.M. 1921; Cal. Civ. C. Sec. 1698; re-en. Sec. 7569, R.C.M. 1935; R.C.M. 1947, 13-907.**

Cross-References

Extinction of written contract by destruction or cancellation, 28-2-1702.

Course of dealing and usage of trade, 30-1-205.

Additional terms in acceptance or confirmation, 30-2-207.

Course of performance or practical construction, 30-2-208.

Modification, rescission and waiver, 30-2-209.

28-2-1603 through 28-2-1610 reserved.

28-2-1611. When written contract may be revised by court. When, through fraud or a mutual mistake of the parties or a mistake of one party while the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons in good faith and for value.

History: **En. Sec. 4430, Civ. C. 1895; re-en. Sec. 6108, Rev. C. 1907; re-en. Sec. 8726, R.C.M. 1921; Cal. Civ. C. Sec. 3399; Field Civ. C. Sec. 1899; re-en. Sec. 8726, R.C.M. 1935; R.C.M. 1947, 17-901.**

Cross-References

Interpretation of instruments — role of judge, 1-4-101.

28-2-1612. Presumption that parties intended equitable agreement. For the purpose of revising a contract, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

History: **En. Sec. 4431, Civ. C. 1895; re-en. Sec. 6109, Rev. C. 1907; re-en. Sec. 8727, R.C.M. 1921; Cal. Civ. C. Sec. 3400; Field Civ. C. Sec. 1900; re-en. Sec. 8727, R.C.M. 1935; R.C.M. 1947, 17-902.**

Cross-References

Intention of the parties — particular and general provisions, 1-4-103.

Intention of the parties, Title 28, ch. 3, part 3.

28-2-1613. Scope of court's inquiry. In revising a written instrument, the court may inquire what the instrument was intended to mean and what were intended to be its legal consequences and is not confined to the inquiry what the language of the instrument was intended to be.

History: **En. Sec. 4432, Civ. C. 1895; re-en. Sec. 6110, Rev. C. 1907; re-en. Sec. 8728, R.C.M. 1921; Cal. Civ. C. Sec. 3401; Field Civ. C. Sec. 1901; re-en. Sec. 8728, R.C.M. 1935; R.C.M. 1947, 17-903.**

Cross-References

Interpretation of instruments — role of judge, 1-4-101.

28-2-1614. Specific enforcement of revised contract. A contract may be first revised and then specifically enforced.

History: En. Sec. 4433, Civ. C. 1895; re-en. Sec. 6111, Rev. C. 1907; re-en. Sec. 8729, R.C.M. 1921; Cal. Civ. C. Sec. 3402; Field Civ. C. Sec. 1902; re-en. Sec. 8729, R.C.M. 1935; R.C.M. 1947, 17-904.

Cross-References

Specific performance, Title 27, ch. 1, part 4.

Part 17

Extinction of Contracts — Rescission

Part Cross-References

Breach of agreement to convey real property, 27-1-314.

Breach of agreement to buy real property, 27-1-315.

Specific and preventive relief, Title 27, ch. 1, part 4.

When final injunction may be granted to prevent breach of obligation, 27-19-102.

Modification, rescission and waiver, 30-2-209.

U.C.C. — sales — breach, repudiation, and excuse, Title 30, ch. 2, part 6.

Canceled dealership contracts — repurchase requirements, Title 30, ch. 11, part 7.

Termination, cancellation, nonrenewal, or substantial alteration of farm implements dealership agreements, Title 30, ch. 11, part 8.

Personal solicitation sales — cancellation by buyer, 30-14-504, 30-14-505.

Retail installment contracts — buyer's right of rescission, 31-1-232.

28-2-1701. How contract extinguished. (1) A contract may be extinguished in the same manner as any other obligation and also in the manner prescribed by part 16 and this part.

(2) A contract is extinguished by its rescission.

History: (1)En. Sec. 2260, Civ. C. 1895; re-en. Sec. 5061, Rev. C. 1907; re-en. Sec. 7563, R.C.M. 1921; Cal. Civ. C. Sec. 1682; re-en. Sec. 7563, R.C.M. 1935; Sec. 13-901, R.C.M. 1947; (2)En. Sec. 2270, Civ. C. 1895; re-en. Sec. 5062, Rev. C. 1907; re-en. Sec. 7564, R.C.M. 1921; Cal. Civ. C. Sec. 1688; Field Civ. C. Sec. 838; re-en. Sec. 7564, R.C.M. 1935; Sec. 13-902, R.C.M. 1947; R.C.M. 1947, 13-901, 13-902; amd. Sec. 23, Ch. 117, L. 1979.

Cross-References

Damages for breach of contract, 27-1-311.

Extinction of obligation by performance, Title 28, ch. 1, part 11.

Extinction of obligation by offer of performance, Title 28, ch. 1, part 12.

Accord and satisfaction, Title 28, ch. 1, part 14.

Kinds of novation, 28-1-1502.

How novation accomplished, 28-1-1503.

Extinction of obligation by a release, 28-1-1601.

Revision, Title 28, ch. 2, part 16.

U.C.C. — sales, performance, Title 30, ch. 2, part 5.

U.C.C. — sales, breach, repudiation, and excuse, Title 30, ch. 2, part 6.

28-2-1702. Extinction of written contract by destruction or cancellation. The destruction or cancellation of a written contract or of the signature of the parties liable thereon with intent to extinguish the obligation thereof extinguishes it as to all the parties consenting to the act.

History: En. Sec. 2282, Civ. C. 1895; re-en. Sec. 5068, Rev. C. 1907; re-en. Sec. 7570, R.C.M. 1921; Cal. Civ. C. Sec. 1699; re-en. Sec. 7570, R.C.M. 1935; R.C.M. 1947, 13-908.

28-2-1703. Extinction of executory obligations of contract by destruction, cancellation, or alteration. (1) The intentional destruction, cancellation, or material alteration of a written contract by a party entitled to any benefit under it or with his consent extinguishes all the executory obligations of the contract in his favor against parties who do not consent to the act.

(2) Where a contract is executed in duplicate, an alteration or destruction of one copy while the other exists is not within the provisions of subsection (1).

History: **En. Secs. 2283, 2284, Civ. C. 1895; re-en. Secs. 5069, 5070, Rev. C. 1907; re-en. Secs. 7571, 7572, R.C.M. 1921; Cal. Civ. C. Secs. 1700, 1701; Field Civ. C. Secs. 845, 846; re-en. Secs. 7571, 7572, R.C.M. 1935; R.C.M. 1947, 13-909, 13-910.**

Cross-References

Executed versus executory contracts, 28-2-104.

28-2-1704 through 28-2-1710 reserved.

28-2-1711. When party may rescind. A party to a contract may rescind the same in the following cases only:

(1) if the consent of the party rescinding or of any party jointly contracting with him was given by mistake or obtained through duress, menace, fraud, or undue influence exercised by or with the connivance of the party as to whom he rescinds or of any other party to the contract jointly interested with such party;

(2) if, through the fault of the party as to whom he rescinds, the consideration for his obligation fails in whole or in part;

(3) if such consideration becomes entirely void from any cause;

(4) if such consideration, before it is rendered to him, fails in a material respect from any cause; or

(5) if all the other parties consent.

History: **En. Sec. 2271, Civ. C. 1895; re-en. Sec. 5063, Rev. C. 1907; re-en. Sec. 7565, R.C.M. 1921; Cal. Civ. C. Sec. 1689; Field Civ. C. Sec. 839; re-en. Sec. 7565, R.C.M. 1935; R.C.M. 1947, 13-903; amd. Sec. 24, Ch. 117, L. 1979.**

Cross-References

Insane persons — disaffirmance, 28-2-202 through 28-2-204.

Effect of consent which is not free, 28-2-302.

Modification, rescission and waiver, 30-2-209.

Minors — disaffirmance, Title 41, ch. 1, part 3.

28-2-1712. When stipulation against rescission ineffective. A stipulation that errors of description shall not avoid a contract or shall be the subject of compensation, or both, does not take away the right of rescission for fraud or for mistake where such mistake is in a matter essential to the inducement of the contract and is not capable of exact and entire compensation.

History: **En. Sec. 2272, Civ. C. 1895; re-en. Sec. 5064, Rev. C. 1907; re-en. Sec. 7566, R.C.M. 1921; Cal. Civ. C. Sec. 1690; Field Civ. C. Sec. 840; re-en. Sec. 7566, R.C.M. 1935; R.C.M. 1947, 13-904.**

Cross-References

Fraud, 28-2-404 through 28-2-406.

Mistake, 28-2-408 through 28-2-411.

U.C.C. — sales — contractual modification or limitation of remedy, 30-2-719.

28-2-1713. How rescission accomplished. Rescission, when not effected by consent, can be accomplished only by the use on the part of the party rescinding of reasonable diligence to comply with the following rules:

(1) He must rescind promptly upon discovering the facts which entitle him to rescind if he is free from duress, menace, undue influence, or disability and is aware of his right to rescind.

(2) He must restore to the other party everything of value which he has received from him under the contract or must offer to restore the same, upon condition that such party shall do likewise, unless the latter is unable or positively refuses to do so.

History: En. Sec. 2273, Civ. C. 1895; re-en. Sec. 5065, Rev. C. 1907; re-en. Sec. 7567, R.C.M. 1921; Cal. Civ. C. Sec. 1691; Field Civ. C. Sec. 841; re-en. Sec. 7567, R.C.M. 1935; R.C.M. 1947, 13-905.

Cross-References

U.C.C. — sales, modification, rescission and waiver, 30-2-209.

U.C.C. — sales, seller's remedies, 30-2-702, 30-2-703.

U.C.C. — sales, buyer's remedies, 30-2-711.

28-2-1714. When rescission may be adjudged. The rescission of a written contract may be adjudged on the application of a party aggrieved:

(1) in any of the cases mentioned in 28-2-1711;

(2) where the contract is unlawful for causes not apparent upon its face and the parties were not equally in fault; or

(3) when the public interest will be prejudiced by permitting it to stand.

History: En. Sec. 4440, Civ. C. 1895; re-en. Sec. 6112, Rev. C. 1907; re-en. Sec. 8730, R.C.M. 1921; Cal. Civ. C. Sec. 3406; Field Civ. C. Sec. 1903; re-en. Sec. 8730, R.C.M. 1935; R.C.M. 1947, 17-905.

Cross-References

What is unlawful, 28-2-701.

Modification, rescission and waiver, 30-2-209.

28-2-1715. When rescission may be adjudged for mistake. Rescission cannot be adjudged for mere mistake unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

History: En. Sec. 4441, Civ. C. 1895; re-en. Sec. 6113, Rev. C. 1907; re-en. Sec. 8731, R.C.M. 1921; Cal. Civ. C. Sec. 3407; Field Civ. C. Sec. 1904; re-en. Sec. 8731, R.C.M. 1935; R.C.M. 1947, 17-906.

Cross-References

Mistake, 28-2-408 through 28-2-411.

Modification, rescission and waiver, 30-2-209.

28-2-1716. Power of court to require party rescinding to do equity. On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to make any compensation or restoration to the other which justice may require.

History: En. Sec. 4442, Civ. C. 1895; re-en. Sec. 6114, Rev. C. 1907; re-en. Sec. 8732, R.C.M. 1921; Cal. Civ. C. Sec. 3408; Field Civ. C. Sec. 1905; re-en. Sec. 8732, R.C.M. 1935; R.C.M. 1947, 17-907.

Cross-References

Parties who cannot obtain specific performance, 27-1-416.

CHAPTER 3

INTERPRETATION OF CONTRACTS

Part 1 — General Provisions

28-3-101. Rules of interpretation to be uniform.
28-3-102. What law and usage to govern interpretation.

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28-3-704. Contractual right to attorney fees treated as reciprocal.

Chapter Cross-References

Interpretation of instruments, Title 1, ch. 4.

Validity of interest rate set by contract, 27-1-213.

Breach of contract, 27-1-311.

Actions based on contract or other obligation, 27-2-202.

Actions for damages arising out of work on improvements to real property, 27-2-208.

Circumstances which extend period of limitations on actions, Title 27, ch. 2, part 4.

Arbitration, Title 27, ch. 5.

Who may obtain declaratory judgment, 27-8-202.

When contract may be construed, 27-8-203.

Cases in which property may be attached, 27-18-101.

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U.C.C. — sales — general obligation and construction of contract, Title 30, ch. 2, part 3.

Construction of contracts — weights, measures, standards, and labeling, 30-12-106.

Construction of insurance policies, 33-15-316.

Part 1

General Provisions

28-3-101. Rules of interpretation to be uniform. All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this code.

History: En. Sec. 2200, Civ. C. 1895; re-en. Sec. 5024, Rev. C. 1907; re-en. Sec. 7526, R.C.M. 1921; Cal. Civ. C. Sec. 1635; Field Civ. C. Sec. 800; re-en. Sec. 7526, R.C.M. 1935; R.C.M. 1947, 13-701.

Cross-References

Interpretation of instruments, Title 1, ch. 4.

Public obligations registration — construction, 17-5-1104.

Montana Procurement Act — supplementary general principles of law applicable, 18-4-131.

What rules govern interpretation of contracts and other obligations, 28-1-103.

28-3-102. What law and usage to govern interpretation. A contract is to be interpreted according to the law and usage of the place where it is to be performed or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.

History: En. Sec. 2211, Civ. C. 1895; re-en. Sec. 5035, Rev. C. 1907; re-en. Sec. 7537, R.C.M. 1921; Cal. Civ. C. Sec. 1646; Field Civ. C. Sec. 811; re-en. Sec. 7537, R.C.M. 1935; R.C.M. 1947, 13-712.

Cross-References

Interpretation of language according to usage in place of execution, 1-4-106.

Liability under guaranty of incomplete contract, 28-11-202.

U.C.C. — course of dealing and usage of trade, 30-1-205.

Part 2

General Rules of Interpretation

Part Cross-References

Interpretation of instruments, Title 1, ch. 4.

What rules govern interpretation of contracts and other obligations, 28-1-103.

General obligation and construction of contract, Title 30, ch. 2, part 3.

28-3-201. Interpretation giving effect to contract favored. A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect if it can be done without violating the intention of the parties.

History: En. Sec. 2208, Civ. C. 1895; re-en. Sec. 5032, Rev. C. 1907; re-en. Sec. 7534, R.C.M. 1921; Cal. Civ. C. Sec. 1643; Field Civ. C. Sec. 808; re-en. Sec. 7534, R.C.M. 1935; R.C.M. 1947, 13-709.

Cross-References

What ought to have been done, 1-3-220.

Certainty, 1-3-229.

Avoiding voidness, 1-3-232.

Formation in general, 30-2-204.

28-3-202. Effect to be given to every part of contract. The whole of a contract is to be taken together so as to give effect to every part if reasonably practicable, each clause helping to interpret the other.

History: En. Sec. 2206, Civ. C. 1895; re-en. Sec. 5030, Rev. C. 1907; re-en. Sec. 7532, R.C.M. 1921; Cal. Civ. C. Sec. 1641; Field Civ. C. Sec. 806; re-en. Sec. 7532, R.C.M. 1935; R.C.M. 1947, 13-707.

28-3-203. When several contracts taken together. Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction are to be taken together.

History: En. Sec. 2207, Civ. C. 1895; re-en. Sec. 5031, Rev. C. 1907; re-en. Sec. 7533, R.C.M. 1921; Cal. Civ. C. Sec. 1642; Field Civ. C. Sec. 807; re-en. Sec. 7533, R.C.M. 1935; R.C.M. 1947, 13-708.

Cross-References

Final written expression — parol or extrinsic evidence, 30-2-202.

Additional terms in acceptance or confirmation, 30-2-207.

U.C.C. — sales — remedies for breach of collateral contracts not impaired, 30-2-701.

28-3-204. How repugnancies reconciled. Repugnancies in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clauses, subordinate to the general intent and purpose of the whole contract.

History: En. Sec. 2217, Civ. C. 1895; re-en. Sec. 5041, Rev. C. 1907; re-en. Sec. 7543, R.C.M. 1921; Cal. Civ. C. Sec. 1652; Field Civ. C. Sec. 817; re-en. Sec. 7543, R.C.M. 1935; R.C.M. 1947, 13-718.

Cross-References

Intention of the parties — particular and general provisions, 1-4-103.

Construction of terms, 1-4-107.

Interpretation of terms that are ambiguous or were intended in a different sense by different parties, 28-3-306.

Particular clauses subordinate to general intent, 28-3-307.

Additional terms in acceptance or confirmation, 30-2-207.

Options and cooperation respecting performance, 30-2-311.

28-3-205. Written or original terms to control printed terms. Where a contract is partly written and partly printed or where part of it is written or printed under the special directions of the parties and with a special view to their intention and the remainder is copied from a form originally prepared without special reference to the particular parties and the particular contract in question, the written parts control the printed parts and the parts which are purely original control those which are copied from a form and, if the two are absolutely repugnant, the latter must be so far disregarded.

History: En. Sec. 2216, Civ. C. 1895; re-en. Sec. 5040, Rev. C. 1907; re-en. Sec. 7542, R.C.M. 1921; Cal. Civ. C. Sec. 1651; Field Civ. C. Sec. 816; re-en. Sec. 7542, R.C.M. 1935; R.C.M. 1947, 13-717.

Cross-References

Written words versus words in printed form, 1-4-105.

28-3-206. Uncertainty to be resolved against party causing it. In cases of uncertainty not removed by parts 1 through 5 of this chapter, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be such party, except that in the case of a contract between a public officer or body, as such, and a private party, it is presumed that all uncertainty was caused by the private party.

History: En. Sec. 2219, Civ. C. 1895; re-en. Sec. 5043, Rev. C. 1907; re-en. Sec. 7545, R.C.M. 1921; Cal. Civ. C. Sec. 1654; Field Civ. C. Sec. 819; re-en. Sec. 7545, R.C.M. 1935; R.C.M. 1947, 13-720; amd. Sec. 25, Ch. 117, L. 1979.

Cross-References

Consideration of circumstances surrounding execution, 1-4-102.

Public contracts — contract actions against the state, Title 18, ch. 1, part 4.

Express versus implied contracts, 28-2-103.

When extrinsic evidence concerning a written agreement may be considered, 28-2-905.

Interpretation of terms that are ambiguous or were intended in a different sense by different parties, 28-3-306.

Additional terms in acceptance or confirmation, 30-2-207.

Part 3

Intention of the Parties

Part Cross-References

Intention of the parties — particular and general provisions, 1-4-103.

When contract considered a pledge to transfer property, 71-2-102.

Lien or contract for lien transfers no title, 71-3-108.

28-3-301. Interpretation to give effect to mutual intention. A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.

History: En. Sec. 2201, Civ. C. 1895; re-en. Sec. 5025, Rev. C. 1907; re-en. Sec. 7527, R.C.M. 1921; Cal. Civ. C. Sec. 1636; Field Civ. C. Sec. 801; re-en. Sec. 7527, R.C.M. 1935; R.C.M. 1947, 13-702.

Cross-References

Essential characteristics of consent, 28-2-301.

When consent is mutual, 28-2-303.

What is unlawful, 28-2-701.

28-3-302. How intention ascertained. For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied.

History: En. Sec. 2202, Civ. C. 1895; re-en. Sec. 5026, Rev. C. 1907; re-en. Sec. 7528, R.C.M. 1921; Cal. Civ. C. Sec. 1637; Field Civ. C. Sec. 802; re-en. Sec. 7528, R.C.M. 1935; R.C.M. 1947, 13-703.

28-3-303. Writing generally to determine intention. When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone if possible, subject, however, to the other provisions of this chapter.

History: En. Sec. 2204, Civ. C. 1895; re-en. Sec. 5028, Rev. C. 1907; re-en. Sec. 7530, R.C.M. 1921; Cal. Civ. C. Sec. 1639; Field Civ. C. Sec. 804; re-en. Sec. 7530, R.C.M. 1935; R.C.M. 1947, 13-705.

Cross-References

Interpretation of language according to usage in place of execution, 1-4-106.

Construction of terms, 1-4-107.

Formal requirements — Statute of Frauds, 30-2-201.

Final written expression — parol or extrinsic evidence, 30-2-202.

28-3-304. When writing disregarded. When through fraud, mistake, or accident a written contract fails to express the real intention of the parties, such intention is to be regarded and the erroneous parts of the writing disregarded.

History: En. Sec. 2205, Civ. C. 1895; re-en. Sec. 5029, Rev. C. 1907; re-en. Sec. 7531, R.C.M. 1921; Cal. Civ. C. Sec. 1640; Field Civ. C. Sec. 805; re-en. Sec. 7531, R.C.M. 1935; R.C.M. 1947, 13-706.

Cross-References

Consideration of circumstances surrounding execution, 1-4-102.

Liability for damages for deceit, 27-1-712.

Duty to restore thing wrongfully acquired or retained, 27-1-713.

Actions for relief on ground of fraud or mistake, 27-2-203.

Final written expression — parol or extrinsic evidence, 30-2-202.

28-3-305. Contract restricted to its apparent objects. However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.

History: En. Sec. 2213, Civ. C. 1895; re-en. Sec. 5037, Rev. C. 1907; re-en. Sec. 7539, R.C.M. 1921; Cal. Civ. C. Sec. 1648; Field Civ. C. Sec. 813; re-en. Sec. 7539, R.C.M. 1935; R.C.M. 1947, 13-714.

Cross-References

Object of contract defined, 28-2-601.

Formation in general, 30-2-204.

Offer and acceptance in formation of contract, 30-2-206.

Additional terms in acceptance and confirmation, 30-2-207.

28-3-306. Interpretation of terms that are ambiguous or were intended in a different sense by different parties. (1) If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.

(2) When the terms of an agreement have been intended in a different sense by different parties to it, that sense is to prevail against either party in which he supposed the other understood it; and when different constructions of a provision are otherwise equally proper, that is to be taken which is most favorable to the party in whose favor the provision was made.

History: (1)En. Sec. 2214, Civ. C. 1895; re-en. Sec. 5038, Rev. C. 1907; re-en. Sec. 7540, R.C.M. 1921; Cal. Civ. C. Sec. 1649; Field Civ. C. Sec. 814; re-en. Sec. 7540, R.C.M. 1935; Sec. 13-715, R.C.M. 1947; (2)En. Sec. 618, p. 200, L. 1877; re-en. Sec. 618, 1st Div. Rev. Stat. 1879; re-en. Sec. 636, 1st Div. Comp. Stat. 1887; re-en. Sec. 3140, C. Civ. Proc. 1895; re-en. Sec. 7881, Rev. C. 1907; re-en. Sec. 10525, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1864; re-en. Sec. 10525, R.C.M. 1935; Sec. 93-401-21, R.C.M. 1947; R.C.M. 1947, 13-715, 93-401-21.

Cross-References

Interpretation of language according to usage in place of execution, 1-4-106.

Construction of terms, 1-4-107.

When extrinsic evidence concerning a written agreement may be considered, 28-2-905.

Uncertainty to be resolved against party causing it, 28-3-206.

Final written expression — parol or extrinsic evidence, 30-2-202.

28-3-307. Particular clauses subordinate to general intent. Particular clauses of a contract are subordinate to its general intent.

History: En. Sec. 2215, Civ. C. 1895; re-en. Sec. 5039, Rev. C. 1907; re-en. Sec. 7541, R.C.M. 1921; Cal. Civ. C. Sec. 1650; Field Civ. C. Sec. 815; re-en. Sec. 7541, R.C.M. 1935; R.C.M. 1947, 13-716.

Cross-References

Particular versus general, 1-3-225.

Intention of the parties — particular and general provisions, 1-4-103.

How repugnancies reconciled, 28-3-204.

General obligation and construction of contract — U.C.C. sales, Title 30, ch. 2, part 3.

Part 4

Factors Considered in Determining Intention

Part Cross-References

General obligations of parties, 30-2-301.

Allocation or division of risks, 30-2-303.

28-3-401. Extent to which language governs interpretation. The language of a contract is to govern its interpretation if the language is clear and explicit and does not involve an absurdity.

History: En. Sec. 2203, Civ. C. 1895; re-en. Sec. 5027, Rev. C. 1907; re-en. Sec. 7529, R.C.M. 1921; Cal. Civ. C. Sec. 1638; Field Civ. C. Sec. 803; re-en. Sec. 7529, R.C.M. 1935; R.C.M. 1947, 13-704.

Cross-References

Interpretation of language according to usage in place of execution, 1-4-106.

Formal requirements — Statute of Frauds, 30-2-201.

Final written expression — parol or extrinsic evidence, 30-2-202.

28-3-402. Reference to circumstances permissible. A contract may be explained by reference to the circumstances under which it was made and the matter to which it relates.

History: En. Sec. 2212, Civ. C. 1895; re-en. Sec. 5036, Rev. C. 1907; re-en. Sec. 7538, R.C.M. 1921; Cal. Civ. C. Sec. 1647; Field Civ. C. Sec. 812; re-en. Sec. 7538, R.C.M. 1935; R.C.M. 1947, 13-713.

Cross-References

Consideration of circumstances surrounding execution, 1-4-102.

When extrinsic evidence concerning a written agreement may be considered, 28-2-905.

Course of dealing and usage of trade, 30-1-205.

Course of performance or practical construction, 30-2-208.

28-3-403. Superseded. Sup. Ct. Ord. No. 12729, July 10, 1979. (See compiler's comments in annotations under Title 26, ch. 10, Mont. Rules of Evidence.)

History: En. Sec. 624, p. 201, L. 1877; re-en. Sec. 624, 1st Div. Rev. Stat. 1879; re-en. Sec. 642, 1st Div. Comp. Stat. 1887; re-en. Sec. 3146, C. Civ. Proc. 1895; re-en. Sec. 7887, Rev. C. 1907; re-en. Sec. 10531, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1870; re-en. Sec. 10531, R.C.M. 1935; R.C.M. 1947, 93-401-27(part); amd. Sec. 26, Ch. 117, L. 1979.

Part 5

Interpretation of Words

Part Cross-References

Construction of words and phrases, 1-2-106.

Interpretation of language according to usage in place of execution, 1-4-106.

Life and Disability Insurance Policy Language Simplification Act, 33-15-321 through 33-15-329.

28-3-501. Words generally understood in their ordinary sense. The words of a contract are to be understood in their ordinary and popular sense rather than according to their strict legal meaning unless used by the parties in a technical sense or unless a special meaning is given to them by usage, in which case the latter must be followed.

History: En. Sec. 2209, Civ. C. 1895; re-en. Sec. 5033, Rev. C. 1907; re-en. Sec. 7535, R.C.M. 1921; Cal. Civ. C. Sec. 1644; Field Civ. C. Sec. 809; re-en. Sec. 7535, R.C.M. 1935; R.C.M. 1947, 13-710.

Cross-References

Construction of terms, 1-4-107.

28-3-502. Interpretation of technical words. Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate unless clearly used in a different sense.

History: En. Sec. 2210, Civ. C. 1895; re-en. Sec. 5034, Rev. C. 1907; re-en. Sec. 7536, R.C.M. 1921; Cal. Civ. C. Sec. 1645; Field Civ. C. Sec. 810; re-en. Sec. 7536, R.C.M. 1935; R.C.M. 1947, 13-711.

Cross-References

Interpretation of language according to usage in place of execution, 1-4-106.

Construction of terms, 1-4-107.

28-3-503. Inconsistent words to be rejected. Words in a contract which are wholly inconsistent with its nature or with the main intention of the parties are to be rejected.

History: En. Sec. 2218, Civ. C. 1895; re-en. Sec. 5042, Rev. C. 1907; re-en. Sec. 7544, R.C.M. 1921; Cal. Civ. C. Sec. 1653; Field Civ. C. Sec. 818; re-en. Sec. 7544, R.C.M. 1935; R.C.M. 1947, 13-719.

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Intention of the parties — particular and general provisions, 1-4-103.

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Course of performance or practical construction, 30-2-208.

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Rules concerning time, Title 1, ch. 1, part 3.

Time — reasonable time — "seasonably", 30-1-204.

Time for payment for ores, 82-2-421.

28-3-601. Time of performance when not specified. If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly (for example, if it consists in the payment of money only), it must be performed immediately upon the thing to be done being exactly ascertained.

History: En. Sec. 2222, Civ. C. 1895; re-en. Sec. 5046, Rev. C. 1907; re-en. Sec. 7548, R.C.M. 1921; Cal. Civ. C. Sec. 1657; Field Civ. C. Sec. 822; re-en. Sec. 7548, R.C.M. 1935; R.C.M. 1947, 13-723.

Cross-References

Absence of specific time provisions — notice of termination, 30-2-309.

Open time for payment or running of credit — authority to ship under reservation, 30-2-310.

Delivery to be within reasonable hours, 30-11-208.

28-3-602. When time considered of the essence. Time is never considered as of the essence of a contract unless by its terms expressly so provided.

History: En. Sec. 2223, Civ. C. 1895; re-en. Sec. 5047, Rev. C. 1907; re-en. Sec. 7549, R.C.M. 1921; Cal. Civ. C. Sec. 1658; Field Civ. C. Sec. 823; re-en. Sec. 7549, R.C.M. 1935; R.C.M. 1947, 13-724.

Cross-References

Absence of specific time provisions — notice of termination, 30-2-309.

28-3-603. Postponement of performance date which falls on holiday. Whenever any act of a secular nature other than a work of necessity or mercy is appointed by contract to be performed upon a particular day which day falls upon a holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

History: En. Sec. 12, Pol. C. 1895; re-en. Sec. 12, Rev. C. 1907; re-en. Sec. 12, R.C.M. 1921; Cal. Pol. C. Sec. 13; re-en. Sec. 12, R.C.M. 1935; R.C.M. 1947, 19-109.

Cross-References

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General obligations of parties, 30-2-301.

28-3-701. Stipulations necessary for reasonableness or conformity to usage. Stipulations which are necessary to make a contract reasonable or conformable to usage are implied in respect to matters concerning which the contract manifests no contrary intention.

History: En. Sec. 2220, Civ. C. 1895; re-en. Sec. 5044, Rev. C. 1907; re-en. Sec. 7546, R.C.M. 1921; Cal. Civ. C. Sec. 1655; Field Civ. C. Sec. 820; re-en. Sec. 7546, R.C.M. 1935; R.C.M. 1947, 13-721.

Cross-References

Reasonableness, 1-3-233.

Interpretation of language according to usage in place of execution, 1-4-106.

Course of dealing and usage of trade, 30-1-205.

Course of performance or practical construction, 30-2-208.

28-3-702. Necessary and incidental terms. All things that in law or usage are considered as incidental to a contract or as necessary to carry it into effect are implied therefrom unless some of them are expressly mentioned therein, in which case all other things of the same class are considered to be excluded.

History: En. Sec. 2221, Civ. C. 1895; re-en. Sec. 5045, Rev. C. 1907; re-en. Sec. 7547, R.C.M. 1921; Cal. Civ. C. Sec. 1656; Field Civ. C. Sec. 821; re-en. Sec. 7547, R.C.M. 1935; R.C.M. 1947, 13-722; amd. Sec. 27, Ch. 117, L. 1979.

Cross-References

Grant includes essentials, 1-3-213.

Final written expression — parol or extrinsic evidence, 30-2-202.

Additional terms in acceptance or confirmation, 30-2-207.

28-3-703. When promise presumed to be joint and several. (1) Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.

(2) A promise made in the singular number but executed by several persons is presumed to be joint and several.

History: En. Secs. 2224, 2225, Civ. C. 1895; re-en. Secs. 5048, 5049, Rev. C. 1907; re-en. Secs. 7550, 7551, R.C.M. 1921; Cal. Civ. C. Secs. 1659, 1660; Field Civ. C. Secs. 824, 825; re-en. Secs. 7550, 7551, R.C.M. 1935; R.C.M. 1947, 13-725, 13-726.

Cross-References

Joint obligations, Title 28, ch. 1, part 3.

28-3-704. Contractual right to attorney fees treated as reciprocal. Whenever, by virtue of the provisions of any contract or obligation in the nature of a contract made and entered into at any time after July 1, 1971, one party to such contract or obligation has an express right to recover attorney fees from any other party to the contract or obligation in the event the party having that right shall bring an action upon the contract or obligation, then in any action on such contract or obligation all parties to the contract or obligation shall be deemed to have the same right to recover attorney fees and the prevailing party in any such action, whether by virtue of the express contractual right or by virtue of this section, shall be entitled to recover his reasonable attorney fees from the losing party or parties.

History: En. Sec. 1, Ch. 259, L. 1971; R.C.M. 1947, 93-8601.1.

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Attorney's fees, Title 25, ch. 10, part 3.

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CHAPTERS 4 THROUGH 9

RESERVED

CHAPTER 10

AGENCY

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Part 1

General Provisions

28-10-101. Definitions of agent and agency. An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency.

History: En. Sec. 3070, Civ. C. 1895; re-en. Sec. 5413, Rev. C. 1907; re-en. Sec. 7928, R.C.M. 1921; Cal. Civ. C. Sec. 2295; Field Civ. C. Sec. 1216; re-en. Sec. 7928, R.C.M. 1935; R.C.M. 1947, 2-101.

Cross-References

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Factor defined, 30-11-601.

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Criminal investigation agent, 44-2-111.

Liability for acts committed by or for another, Title 45, ch. 2, part 3.

Agent acting for corporation when law not complied with — misdemeanor, 45-2-311.

28-10-102. General versus special agents. An agent for a particular act or transaction is called a special agent. All others are general agents.

History: En. Sec. 3072, Civ. C. 1895; re-en. Sec. 5415, Rev. C. 1907; re-en. Sec. 7930, R.C.M. 1921; Cal. Civ. C. Sec. 2297; Field Civ. C. Sec. 1218; re-en. Sec. 7930, R.C.M. 1935; R.C.M. 1947, 2-103.

28-10-103. Actual versus ostensible agency. An agency is either actual or ostensible. An agency is actual when the agent is really employed by the principal. An agency is ostensible when the principal intentionally or by want of ordinary care causes a third person to believe another to be his agent who is not really employed by him.

History: **En. Secs. 3073, 3074, 3075, Civ. C. 1895; re-en. Secs. 5416, 5417, 5418, Rev. C. 1907; re-en. Secs. 7931, 7932, 7933, R.C.M. 1921; Cal. Civ. C. Secs. 2298, 2299, 2300; Field Civ. C. Secs. 1219, 1220, 1221; re-en. Secs. 7931, 7932, 7933, R.C.M. 1935; R.C.M. 1947, 2-104, 2-105, 2-106.**

Cross-References

Authority of agent, Title 28, ch. 10, part 4.

Authority of factor, 30-11-606.

Ostensible authority, 30-11-607.

28-10-104. Who may appoint an agent, who may be an agent. Any person having capacity to contract, except a minor, may appoint an agent, and any person may be an agent.

History: **En. Secs. 16, 3071, Civ. C. 1895; re-en. Secs. 3590, 5414, Rev. C. 1907; re-en. Secs. 5678, 7929, R.C.M. 1921; Cal. Civ. C. Secs. 33, 2296; Field Civ. C. Secs. 15, 1217; re-en. Secs. 5678, 7929, R.C.M. 1935; R.C.M. 1947, 2-102, 64-105; amd. Sec. 28, Ch. 117, L. 1979.**

Cross-References

University agency fund — state agency fund, 17-2-102.

Artist-art dealer — agency relationship, 22-2-503.

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Agency status of collecting banks, 30-4-201.

Registered agent of corporation, 35-1-305.

Cooperative agricultural marketing — who may be members, 35-17-301.

Delegation of power by minors forbidden, 41-1-301.

28-10-105. What acts agent may perform. (1) An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention.

(2) Every act which, according to this code, may be done by or to any person may be done by or to the agent of such person for that purpose unless a contrary intention clearly appears.

History: **En. Secs. 3080, 3081, Civ. C. 1895; re-en. Secs. 5419, 5420, Rev. C. 1907; re-en. Secs. 7934, 7935, R.C.M. 1921; Cal. Civ. C. Secs. 2304, 2305; Field Civ. C. Secs. 1222, 1223; re-en. Secs. 7934, 7935, R.C.M. 1935; R.C.M. 1947, 2-107, 2-108.**

Cross-References

Who must make offer of performance, 28-1-1204.

To whom offer must be made, 28-1-1205.

Agent not to exceed actual authority, 28-10-301.

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Board of Housing as agent, 90-6-104.

Part 2

Creation of Agency

Part Cross-References

Master and servant — term of hiring, 39-2-602.

28-10-201. How agency may be created. An agency may be created and an authority may be conferred by a precedent authorization or a subsequent ratification.

History: En. Sec. 3083, Civ. C. 1895; re-en. Sec. 5422, Rev. C. 1907; re-en. Sec. 7937, R.C.M. 1921; Cal. Civ. C. Sec. 2307; Field Civ. C. Sec. 1225; re-en. Sec. 7937, R.C.M. 1935; R.C.M. 1947, 2-114.

Cross-References

Presumption and duration of agency status of collecting bank, 30-4-201.

28-10-202. Consideration unnecessary. A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal.

History: En. Sec. 3084, Civ. C. 1895; re-en. Sec. 5423, Rev. C. 1907; re-en. Sec. 7938, R.C.M. 1921; Cal. Civ. C. Sec. 2308; Field Civ. C. Sec. 1226; re-en. Sec. 7938, R.C.M. 1935; R.C.M. 1947, 2-115.

Cross-References

Consideration, Title 28, ch. 2, part 8.

28-10-203. When written authorization necessary. An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing.

History: En. Sec. 3085, Civ. C. 1895; re-en. Sec. 5424, Rev. C. 1907; re-en. Sec. 7939, R.C.M. 1921; Cal. Civ. C. Sec. 2309; Based on Field Civ. C. Sec. 1227; re-en. Sec. 7939, R.C.M. 1935; R.C.M. 1947, 2-116.

Cross-References

Artist-art dealer relationship — writing required, 22-2-503.

What contracts must be in writing, 28-2-903.

When agent responsible to third persons as a principal, 28-10-702.

Statute of Frauds for kinds of personal property not otherwise covered, 30-1-206.

Formal requirements — Statute of Frauds, 30-2-201.

Contract for sale of real property, 30-11-111.

28-10-204 through 28-10-210 reserved.

28-10-211. How agent's act ratified. A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified or, whenever an oral authorization would suffice, by knowingly accepting or retaining the benefit of the act.

History: En. Sec. 3086, Civ. C. 1895; re-en. Sec. 5425, Rev. C. 1907; re-en. Sec. 7940, R.C.M. 1921; Cal. Civ. C. Sec. 2310; Field Civ. C. Sec. 1228; re-en. Sec. 7940, R.C.M. 1935; R.C.M. 1947, 2-117; amd. Sec. 29, Ch. 117, L. 1979.

Cross-References

Principal's consent needed to relieve factor from liability, 30-11-605.

28-10-212. Ratification of part of indivisible transaction. Ratification of part of an indivisible transaction is a ratification of the whole.

History: En. Sec. 3087, Civ. C. 1895; re-en. Sec. 5426, Rev. C. 1907; re-en. Sec. 7941, R.C.M. 1921; Cal. Civ. C. Sec. 2311; Field Civ. C. Sec. 1229; re-en. Sec. 7941, R.C.M. 1935; R.C.M. 1947, 2-118.

28-10-213. Ratification not to prejudice third persons. No unauthorized act can be made valid retroactively to the prejudice of third persons without their consent.

History: En. Sec. 3089, Civ. C. 1895; re-en. Sec. 5428, Rev. C. 1907; re-en. Sec. 7943, R.C.M. 1921; Cal. Civ. C. Sec. 2313; Field Civ. C. Sec. 1231; re-en. Sec. 7943, R.C.M. 1935; R.C.M. 1947, 2-120.

Cross-References

When agent responsible to third persons as a principal, 28-10-702.

28-10-214. When ratification void. A ratification is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act.

History: En. Sec. 3088, Civ. C. 1895; re-en. Sec. 5427, Rev. C. 1907; re-en. Sec. 7942, R.C.M. 1921; Cal. Civ. C. Sec. 2312; Field Civ. C. Sec. 1230; re-en. Sec. 7942, R.C.M. 1935; R.C.M. 1947, 2-119.

Cross-References

Authority of agent, Title 28, ch. 10, part 4.

28-10-215. When ratification may be rescinded. A ratification may be rescinded when made without such consent as is required in a contract or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise.

History: En. Sec. 3090, Civ. C. 1895; re-en. Sec. 5429, Rev. C. 1907; re-en. Sec. 7944, R.C.M. 1921; Cal. Civ. C. Sec. 2314; Field Civ. C. Sec. 1232; re-en. Sec. 7944, R.C.M. 1935; R.C.M. 1947, 2-121.

Cross-References

Extinction of contracts — rescission, Title 28, ch. 2, part 17.

Modification, rescission and waiver, 30-2-209.

Part 3

Duties of Agent

Part Cross-References

Rules determining rights and duties of partners, 35-10-401.

28-10-301. Agent not to exceed actual authority. An agent must not exceed the limits of his actual authority as defined by this chapter and parts 5 and 6 of chapter 11 of Title 30.

History: En. Sec. 2740, Civ. C. 1895; re-en. Sec. 5286, Rev. C. 1907; re-en. Sec. 7801, R.C.M. 1921; Cal. Civ. C. Sec. 2019; Field Civ. C. Sec. 1041; re-en. Sec. 7801, R.C.M. 1935; R.C.M. 1947, 2-109; amd. Sec. 30, Ch. 117, L. 1979.

Cross-References

Obedience required from factor, 30-11-602.

Partner as agent of partnership — restrictions on partner's authority, 35-10-301.

28-10-302. Duty to keep principal informed. An agent must use ordinary diligence to keep his principal informed of his acts in the course of the agency.

History: En. Sec. 2741, Civ. C. 1895; re-en. Sec. 5287, Rev. C. 1907; re-en. Sec. 7802, R.C.M. 1921; Cal. Civ. C. Sec. 2020; Field Civ. C. Sec. 1042; re-en. Sec. 7802, R.C.M. 1935; R.C.M. 1947, 2-110.

Cross-References

Partnership charged with knowledge of or notice to partner, 35-10-304.

28-10-303. Duty of agent employed to collect negotiable instrument. An agent employed to collect a negotiable instrument must collect it promptly and take all measures necessary to charge the parties thereto in case of its dishonor and, if it is a bill of exchange, present it for acceptance with reasonable diligence.

History: En. Sec. 2742, Civ. C. 1895; re-en. Sec. 5288, Rev. C. 1907; re-en. Sec. 7803, R.C.M. 1921; Cal. Civ. C. Sec. 2021; Field Civ. C. Sec. 1043; re-en. Sec. 7803, R.C.M. 1935; R.C.M. 1947, 2-111.

Cross-References

Powers and duties of notary public, 1-5-416.

U.C.C. — commercial paper, Title 30, ch. 3.

U.C.C. — warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Servant to pay over without demand, 39-2-605.

Part 4

Authority of Agent

Part Cross-References

Breach of warranty of agent's authority, 27-1-313.

Warranty of authority, 28-10-701.

Obedience required from factor, 30-11-602.

Partner as agent of partnership — restrictions on partner's authority, 35-10-301.

Members of grazing district as agents, 76-16-302.

28-10-401. What authority agent has. An agent has such authority as the principal actually or ostensibly confers upon him.

History: En. Sec. 3091, Civ. C. 1895; re-en. Sec. 5430, Rev. C. 1907; re-en. Sec. 7945, R.C.M. 1921; Cal. Civ. C. Sec. 2315; Field Civ. C. Sec. 1233; re-en. Sec. 7945, R.C.M. 1935; R.C.M. 1947, 2-122.

Cross-References

Actual versus ostensible agency, 28-10-103.

What acts agent may perform, 28-10-105.

Agent not to exceed actual authority, 28-10-301.

Warranty of authority, 28-10-701.

Authority of factor, 30-11-606.

28-10-402. Actual authority defined. Actual authority is such as the principal intentionally confers upon the agent or intentionally or by want of ordinary care allows the agent to believe himself to possess.

History: En. Sec. 3092, Civ. C. 1895; re-en. Sec. 5431, Rev. C. 1907; re-en. Sec. 7946, R.C.M. 1921; Cal. Civ. C. Sec. 2316; Field Civ. C. Sec. 1234; re-en. Sec. 7946, R.C.M. 1935; R.C.M. 1947, 2-123.

Cross-References

Actual versus ostensible agency, 28-10-103.

Authority of factor, 30-11-606.

28-10-403. Ostensible authority defined. Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess.

History: En. Sec. 3093, Civ. C. 1895; re-en. Sec. 5432, Rev. C. 1907; re-en. Sec. 7947, R.C.M. 1921; Cal. Civ. C. Sec. 2317; Field Civ. C. Sec. 1235; re-en. Sec. 7947, R.C.M. 1935; R.C.M. 1947, 2-124.

Cross-References

Actual versus ostensible agency, 28-10-103.

Ostensible authority, 30-11-607.

28-10-404. When and as to whom agent's authority restricted. Every agent has actually such authority as is defined by this chapter and parts 5 and 6 of chapter 11 of Title 30 unless specially deprived thereof by his principal and has even then such authority ostensibly except as to persons who have actual or constructive notice of the restriction upon his authority.

History: En. Sec. 3094, Civ. C. 1895; re-en. Sec. 5433, Rev. C. 1907; re-en. Sec. 7948, R.C.M. 1921; Cal. Civ. C. Sec. 2318; Field Civ. C. Sec. 1236; re-en. Sec. 7948, R.C.M. 1935; R.C.M. 1947, 2-125; amd. Sec. 31, Ch. 117, L. 1979.

Cross-References

Partner as agent of partnership — restrictions on partner's authority, 35-10-301.

28-10-405. Implied powers of agent. An agent has authority to:

(1) do everything necessary and proper and usual, in the ordinary course of business, for effecting the purpose of his agency; and

(2) make a representation respecting any matter of fact, except the terms of his authority, upon which his right to use his authority depends and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made.

History: En. Sec. 3095, Civ. C. 1895; re-en. Sec. 5434, Rev. C. 1907; re-en. Sec. 7949, R.C.M. 1921; Cal. Civ. C. Sec. 2319; Field Civ. C. Sec. 1237; re-en. Sec. 7949, R.C.M. 1935; R.C.M. 1947, 2-126; amd. Sec. 32, Ch. 117, L. 1979.

Cross-References

What acts agent may perform, 28-10-105.

Auctioneer's authority from the seller, 30-11-506.

Auctioneer's authority from the bidder, 30-11-507.

Authority of factor, 30-11-606.

28-10-406. Interpretation of authority given partly in general and partly in specific terms. When an authority is given partly in general and partly in specific terms, the general authority gives no higher powers than those specifically mentioned.

History: En. Sec. 3097, Civ. C. 1895; re-en. Sec. 5436, Rev. C. 1907; re-en. Sec. 7951, R.C.M. 1921; Cal. Civ. C. Sec. 2321; Field Civ. C. Sec. 1239; re-en. Sec. 7951, R.C.M. 1935; R.C.M. 1947, 2-128.

Cross-References

What acts agent may perform, 28-10-105.

28-10-407. Statutory exceptions to general authority. An authority expressed in general terms, however broad, does not authorize an agent to:

(1) act in his own name unless it is the usual course of business to do so;

(2) define the scope of his agency; or

(3) do any act which a trustee is forbidden to do by Title 72, chapter 20, part 2.

History: En. Sec. 3098, Civ. C. 1895; re-en. Sec. 5437, Rev. C. 1907; re-en. Sec. 7952, R.C.M. 1921; Cal. Civ. C. Sec. 2322; Field Civ. C. Sec. 1240; re-en. Sec. 7952, R.C.M. 1935; R.C.M. 1947, 2-129.

Cross-References

What acts agent may perform, 28-10-105.

Agent not to exceed actual authority, 28-10-301.

What authority agent has, 28-10-401.

Auctioneer's authority from the seller, 30-11-506.

Authority of factor, 30-11-606.

Partner as agent of partnership — restrictions on partner's authority, 35-10-301.

28-10-408. When agent may disobey instructions. An agent has power to disobey instructions in dealing with the subject of the agency in cases where it is clearly for the interest of his principal that he should do so and there is not time to communicate with the principal.

History: En. Sec. 3096, Civ. C. 1895; re-en. Sec. 5435, Rev. C. 1907; re-en. Sec. 7950, R.C.M. 1921; Cal. Civ. C. Sec. 2320; Field Civ. C. Sec. 1238; re-en. Sec. 7950, R.C.M. 1935; R.C.M. 1947, 2-127.

Cross-References

How agent's act ratified, 28-10-211.

28-10-409. No authority to defraud principal. An agent can never have authority, either actual or ostensible, to do an act which is and is known or suspected by the person with whom he deals to be a fraud upon the principal.

History: En. Sec. 3082, Civ. C. 1895; re-en. Sec. 5421, Rev. C. 1907; re-en. Sec. 7936, R.C.M. 1921; Cal. Civ. C. Sec. 2306; Field Civ. C. Sec. 1224; re-en. Sec. 7936, R.C.M. 1935; R.C.M. 1947, 2-113.

Cross-References

Arrest of agent for misconduct, 27-16-102.

Principal's consent needed to relieve factor from liability, 30-11-605.

Partnership bound by partner's breach of trust, 35-10-306.

28-10-410 through 28-10-420 reserved.

28-10-421. What included in authority to sell personal property. An authority to sell personal property includes authority to warrant the title of the principal and the quantity and quality of the property.

History: En. Sec. 3099, Civ. C. 1895; re-en. Sec. 5438, Rev. C. 1907; re-en. Sec. 7953, R.C.M. 1921; Cal. Civ. C. Sec. 2323; Field Civ. C. Sec. 1241; re-en. Sec. 7953, R.C.M. 1935; R.C.M. 1947, 2-130.

Cross-References

Auctioneer's authority from the seller, 30-11-506.

28-10-422. What included in authority to sell real property. An authority to sell and convey real property includes authority to give the usual covenants of warranty.

History: En. Sec. 3100, Civ. C. 1895; re-en. Sec. 5439, Rev. C. 1907; re-en. Sec. 7954, R.C.M. 1921; Cal. Civ. C. Sec. 2324; Field Civ. C. Sec. 1242; re-en. Sec. 7954, R.C.M. 1935; R.C.M. 1947, 2-131.

Cross-References

Authority to be in writing, 28-2-903.

Usual common-law covenants required by real property contracts — when, 30-11-109.

Contract for sale of real property, 30-11-111.

Covenants running with the land, Title 70, ch. 17, part 2.

28-10-423. Authority of agent to sell to receive price. A general agent to sell who is entrusted by the principal with the possession of the thing sold has authority to receive the price. A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards.

History: En. Secs. 3101, 3102, Civ. C. 1895; re-en. Secs. 5440, 5441, Rev. C. 1907; re-en. Secs. 7955, 7956, R.C.M. 1921; Cal. Civ. C. Secs. 2325, 2326; Field Civ. C. Secs. 1243, 1244; re-en. Secs. 7955, 7956, R.C.M. 1935; R.C.M. 1947, 2-132, 2-133.

Cross-References

Person in the position of a seller, 30-2-707.

Auctioneer's authority from the seller, 30-11-506.

Factor defined, 30-11-601.

Partnership bound by partner's breach of trust, 35-10-306.

Servant to pay over without demand, 39-2-605.

Part 5

Subagents

28-10-501. When agent may delegate powers. An agent, unless specially forbidden by his principal to do so, can delegate his powers to another person in any of the following cases and in no others:

(1) when the act to be done is purely mechanical;

(2) when it is such as the agent cannot himself and the subagent can lawfully perform;

(3) when it is the usage of the place to delegate such powers; or

(4) when such delegation is specially authorized by the principal.

History: En. Sec. 3140, Civ. C. 1895; re-en. Sec. 5456, Rev. C. 1907; re-en. Sec. 7971, R.C.M. 1921; Cal. Civ. C. Sec. 2349; Field Civ. C. Sec. 1259; re-en. Sec. 7971, R.C.M. 1935; R.C.M. 1947, 2-301.

Cross-References

University system as agent, 17-2-102.

Auctioneer's assistant — who may act and when, 30-11-512.

Authority of factor, 30-11-606.

28-10-502. Effect of unauthorized employment of subagent. If an agent employs a subagent without authority, the former is a principal and the latter his agent and the principal of the former has no connection with the latter. A mere agent of an agent is not responsible as such to the principal of the latter.

History: En. Secs. 2743, 3141, Civ. C. 1895; re-en. Secs. 5289, 5457, Rev. C. 1907; re-en. Secs. 7804, 7972, R.C.M. 1921; Cal. Civ. C. Secs. 2022, 2350; Field Civ. C. Secs. 1044, 1260; re-en. Secs. 7804, 7972, R.C.M. 1935; R.C.M. 1947, 2-112, 2-302.

Cross-References

When agent responsible to third persons as a principal, 28-10-702.

28-10-503. Effect of authorized employment of subagent. A subagent lawfully appointed represents the principal in like manner with the original agent, and the original agent is not responsible to third persons for the acts of the subagent.

History: En. Sec. 3142, Civ. C. 1895; re-en. Sec. 5458, Rev. C. 1907; re-en. Sec. 7973, R.C.M. 1921; Cal. Civ. C. Sec. 2351; Field Civ. C. Sec. 1261; re-en. Sec. 7973, R.C.M. 1935; R.C.M. 1947, 2-303.

Cross-References

Auctioneer's assistant — who may act and when, 30-11-512.

Authority of factor, 30-11-606.

Part 6

Rights and Liabilities of Principal

Part Cross-References

Rules determining rights and duties of partners, 35-10-401.

28-10-601. Accrual of rights and liabilities to principal. An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal.

History: En. Sec. 3110, Civ. C. 1895; re-en. Sec. 5442, Rev. C. 1907; re-en. Sec. 7957, R.C.M. 1921; Cal. Civ. C. Sec. 2330; Field Civ. C. Sec. 1245; re-en. Sec. 7957, R.C.M. 1935; R.C.M. 1947, 2-201.

Cross-References

What acts agent may perform, 28-10-105.

What authority agent has, 28-10-401.

Implied powers of agent, 28-10-405.

Instruments payable with words of description, 30-3-117.

Signature by authorized representative, 30-3-403.

Rights acquired by due negotiation, 30-7-502.

Auctioneer's authority from the seller, 30-11-506.

Authority of factor, 30-11-606.

Partnership liable for partner's wrongful act, 35-10-305.

Partnership bound by partner's breach of trust, 35-10-306.

Nature of partner's liability, 35-10-307.

Liability of railway corporation for negligence of fellow servants, 39-2-703.

Liability of mining company for negligence of fellow servants, 39-2-704.

Contract discharging employer liability for negligence void, 39-2-705.

28-10-602. Principal's responsibility for agent's negligence, omissions, and wrongs. (1) Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business, and for his willful omission to fulfill the obligations of the principal.

(2) A principal is responsible for no other wrongs committed by his agent than those mentioned in subsection (1) unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service.

History: En. Secs. 3118, 3119, Civ. C. 1895; re-en. Secs. 5450, 5451, Rev. C. 1907; re-en. Secs. 7965, 7966, R.C.M. 1921; Cal. Civ. C. Secs. 2338, 2339; Field Civ. C. Secs. 1253, 1254; re-en. Secs. 7965, 7966, R.C.M. 1935; R.C.M. 1947, 2-209, 2-210.

Cross-References

Arrest of agent for misconduct, 27-16-102.

When agent responsible to third persons as a principal, 28-10-702.

Partnership liable for partner's wrongful act, 35-10-305.

When servant may be discharged, 39-2-606.

Liability of railway corporation for negligence of fellow servants, 39-2-703.

Liability of mining company for negligence of fellow servants, 39-2-704.

28-10-603. When instrument binds principal. An instrument within the scope of his authority by which an agent intends to bind his principal does bind him if such intent is plainly inferable from the instrument itself.

History: En. Sec. 3117, Civ. C. 1895; re-en. Sec. 5449, Rev. C. 1907; re-en. Sec. 7964, R.C.M. 1921; Cal. Civ. C. Sec. 2337; Field Civ. C. Sec. 1252; re-en. Sec. 7964, R.C.M. 1935; R.C.M. 1947, 2-208.

Cross-References

Authority of agent, Title 28, ch. 10, part 4.

Auctioneer's authority from the seller, 30-11-506.

Authority of factor, 30-11-606.

28-10-604. When notice to principal or agent is notice to the other. As against a principal, both principal and agent are deemed to have notice of whatever either has notice of and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.

History: En. Sec. 3112, Civ. C. 1895; re-en. Sec. 5444, Rev. C. 1907; re-en. Sec. 7959, R.C.M. 1921; Cal. Civ. C. Sec. 2332; Field Civ. C. Sec. 1247; re-en. Sec. 7959, R.C.M. 1935; R.C.M. 1947, 2-203.

Cross-References

Notice of dishonor, 30-3-508.

Obedience required from factor, 30-11-602.

Partnership charged with knowledge of or notice to partner, 35-10-304.

Mining, defective locations good against persons with notice, 82-2-112.

28-10-605. Extent to which principal bound when agent exceeds authority. When an agent exceeds his authority, his principal is bound by his authorized acts only so far as they can be plainly separated from those which are unauthorized.

History: En. Sec. 3113, Civ. C. 1895; re-en. Sec. 5445, Rev. C. 1907; re-en. Sec. 7960, R.C.M. 1921; Cal. Civ. C. Sec. 2333; Field Civ. C. Sec. 1248; re-en. Sec. 7960, R.C.M. 1935; R.C.M. 1947, 2-204.

Cross-References

Principal's consent needed to relieve factor from liability, 30-11-605.

Partnership liable for partner's wrongful act, 35-10-305.

28-10-606. Extent to which principal bound by acts under ostensible authority. A principal is bound by acts of his agent under a merely ostensible authority to those persons only who have in good faith and without ordinary negligence incurred a liability or parted with value upon the faith thereof.

History: En. Sec. 3114, Civ. C. 1895; re-en. Sec. 5446, Rev. C. 1907; re-en. Sec. 7961, R.C.M. 1921; Cal. Civ. C. Sec. 2334; Field Civ. C. Sec. 1249; re-en. Sec. 7961, R.C.M. 1935; R.C.M. 1947, 2-205.

Cross-References

Ostensible authority defined, 28-10-403.

Ostensible authority, 30-11-607.

28-10-607. When principal bound by incomplete execution of authority. A principal is bound by an incomplete execution of an authority when it is consistent with the whole purpose and scope thereof, but not otherwise.

History: En. Sec. 3111, Civ. C. 1895; re-en. Sec. 5443, Rev. C. 1907; re-en. Sec. 7958, R.C.M. 1921; Cal. Civ. C. Sec. 2331; Field Civ. C. Sec. 1246; re-en. Sec. 7958, R.C.M. 1935; R.C.M. 1947, 2-202.

Cross-References

Interpretation of authority given partly in general and partly in specific terms, 28-10-406.

28-10-608. Rights of person who deals with agent without knowledge of agency. One who deals with an agent without knowing or having reason to believe that the agent acts as such in the transaction may set off against any claim of the principal arising out of the same all claims which he might have set off against the agent before notice of the agency.

History: En. Sec. 3116, Civ. C. 1895; re-en. Sec. 5448, Rev. C. 1907; re-en. Sec. 7963, R.C.M. 1921; Cal. Civ. C. Sec. 2336; Field Civ. C. Sec. 1251; re-en. Sec. 7963, R.C.M. 1935; R.C.M. 1947, 2-207.

Cross-References

Principal's consent needed to relieve factor from liability, 30-11-605.

28-10-609. Principal's liability when agent given exclusive credit. If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent in good faith before receiving notice of the creditor's election to hold him responsible.

History: En. Sec. 3115, Civ. C. 1895; re-en. Sec. 5447, Rev. C. 1907; re-en. Sec. 7962, R.C.M. 1921; Cal. Civ. C. Sec. 2335; Field Civ. C. Sec. 1250; re-en. Sec. 7962, R.C.M. 1935; R.C.M. 1947, 2-206.

Cross-References

When agent responsible to third persons as a principal, 28-10-702.

Sales on credit, 30-11-603.

Nature of partner's liability, 35-10-307.

Part 7

Agent's Responsibility to Third Persons

28-10-701. Warranty of authority. One who assumes to act as an agent thereby warrants to all who deal with him in that capacity that he has the authority which he assumes.

History: En. Sec. 3130, Civ. C. 1895; re-en. Sec. 5452, Rev. C. 1907; re-en. Sec. 7967, R.C.M. 1921; Cal. Civ. C. Sec. 2342; Field Civ. C. Sec. 1255; re-en. Sec. 7967, R.C.M. 1935; R.C.M. 1947, 2-211.

Cross-References

Breach of warranty of agent's authority, 27-1-313.

What included in authority to sell personal property, 28-10-421.

What included in authority to sell real property, 28-10-422.

Auctioneer's authority from the seller, 30-11-506.

Authority of factor, 30-11-606.

28-10-702. When agent responsible to third persons as a principal. One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency in any of the following cases and in no other:

(1) when, with his consent, credit is given to him personally in a transaction;

(2) when he enters into a written contract in the name of his principal without believing in good faith that he has authority to do so; or

(3) when his acts are wrongful in their nature.

History: En. Sec. 3131, Civ. C. 1895; re-en. Sec. 5453, Rev. C. 1907; re-en. Sec. 7968, R.C.M. 1921; Cal. Civ. C. Sec. 2343; Field Civ. C. Sec. 1256; re-en. Sec. 7968, R.C.M. 1935; R.C.M. 1947, 2-212.

Cross-References

When written authority necessary, 28-10-203.

Effect of unauthorized employment of subagent, 28-10-502.

Principal's responsibility for agent's negligence, omissions, and wrongs, 28-10-602.

Conversion of instrument — innocent representative, 30-3-419.

Liability of factor under guaranty commission, 30-11-604.

Persons responsible for unfair trade practices, 30-14-203.

28-10-703. Responsibility of agent when third person claims property received for principal. If an agent receives anything for the benefit of his principal to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he has made to his principal, in good faith, on account of the same. He is responsible therefor if, after such demand, he delivers it to his principal.

History: En. Sec. 3132, Civ. C. 1895; re-en. Sec. 5454, Rev. C. 1907; re-en. Sec. 7969, R.C.M. 1921; Cal. Civ. C. Sec. 2344; Field Civ. C. Sec. 1257; re-en. Sec. 7969, R.C.M. 1935; R.C.M. 1947, 2-213; amd. Sec. 33, Ch. 117, L. 1979.

Cross-References

Auctioneer's authority from the seller, 30-11-506.

Principal's consent needed to relieve factor from liability, 30-11-605.

Servant to pay over without demand, 39-2-605.

28-10-704. Applicability of laws relating to capacity to contract. The provisions of this part are subject to the provisions of chapter 2, part 2; 28-10-104; and Title 41, chapter 1.

History: En. Sec. 3133, Civ. C. 1895; re-en. Sec. 5455, Rev. C. 1907; re-en. Sec. 7970, R.C.M. 1921; Cal. Civ. C. Sec. 2345; Field Civ. C. Sec. 1258; re-en. Sec. 7970, R.C.M. 1935; R.C.M. 1947, 2-214; amd. Sec. 34, Ch. 117, L. 1979.

Part 8

Termination of Agency

28-10-801. Circumstances which terminate any agency. An agency is terminated as to every person having notice thereof by:

(1) the expiration of its term;
(2) the extinction of its subject;
(3) the death of the agent;
(4) his renunciation of the agency; or
(5) the incapacity of the agent to act as such.

History: En. Sec. 3150, Civ. C. 1895; re-en. Sec. 5459, Rev. C. 1907; re-en. Sec. 7974, R.C.M. 1921; Cal. Civ. C. Sec. 2355; Field Civ. C. Sec. 1262; re-en. Sec. 7974, R.C.M. 1935; R.C.M. 1947, 2-304.

Cross-References

Termination of employment, Title 39, ch. 2, part 5.

When servant may be discharged, 39-2-606.

28-10-802. Circumstances which terminate agency not coupled with an interest. Unless the power of the agent is coupled with an interest in the subject of the agency, it is terminated as to every person having notice thereof by:

(1) its revocation by the principal;
(2) his death; or
(3) his incapacity to contract.

History: En. Sec. 3151, Civ. C. 1895; re-en. Sec. 5460, Rev. C. 1907; re-en. Sec. 7975, R.C.M. 1921; Cal. Civ. C. Sec. 2356; Field Civ. C. Sec. 1263; re-en. Sec. 7975, R.C.M. 1935; R.C.M. 1947, 2-305.

Cross-References

Who may contract, 28-2-201.

CHAPTER 11

GUARANTY, INDEMNITY, AND SURETYSHIP

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Chapter Cross-References

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Part 1

Guaranty — General Provisions

Part Cross-References

Economic development guaranty program, 17-5-1519.

Contract of accommodation party — commercial paper, 30-3-415.

Insurance guaranty associations, Title 33, ch. 10.

28-11-101. Guaranty defined. A guaranty is a promise to answer for the debt, default, or miscarriage of another person.

History: En. Sec. 3600, Civ. C. 1895; re-en. Sec. 5656, Rev. C. 1907; re-en. Sec. 8171, R.C.M. 1921; Cal. Civ. C. Sec. 2787; Field Civ. C. Sec. 1534; re-en. Sec. 8171, R.C.M. 1935; R.C.M. 1947, 30-101.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

Suretyship, Title 28, ch. 11, part 4.

28-11-102. Knowledge or consent of principal not required. A person may become guarantor even without the knowledge or consent of the principal.

History: En. Sec. 3601, Civ. C. 1895; re-en. Sec. 5657, Rev. C. 1907; re-en. Sec. 8172, R.C.M. 1921; Cal. Civ. C. Sec. 2788; Field Civ. C. Sec. 1535; re-en. Sec. 8172, R.C.M. 1935; R.C.M. 1947, 30-102.

Cross-References

Consideration, Title 28, ch. 2, part 8.

28-11-103. When separate consideration required. Where a guaranty is entered into at the same time with the original obligation or with the acceptance of the latter by the guarantee and forms with that obligation a part of the consideration to him, no other consideration need exist. In all other cases, there must be a consideration distinct from that of the original obligation.

History: En. Sec. 3610, Civ. C. 1895; re-en. Sec. 5658, Rev. C. 1907; re-en. Sec. 8173, R.C.M. 1921; Cal. Civ. C. Sec. 2792; Field Civ. C. Sec. 1536; re-en. Sec. 8173, R.C.M. 1935; R.C.M. 1947, 30-103.

Cross-References

Consideration, Title 28, ch. 2, part 8.

28-11-104. Guaranty generally to be in writing — form. Except as prescribed by 28-11-105, a guaranty must be in writing and signed by the guarantor, but the writing need not express a consideration.

History: En. Sec. 3611, Civ. C. 1895; re-en. Sec. 5659, Rev. C. 1907; re-en. Sec. 8174, R.C.M. 1921; Cal. Civ. C. Sec. 2793; Field Civ. C. Sec. 1537; re-en. Sec. 8174, R.C.M. 1935; R.C.M. 1947, 30-104.

Cross-References

What contracts must be in writing, 28-2-903.

28-11-105. When guaranty considered original obligation and need not be in writing. A promise to answer for the obligation of another in any of the following cases is deemed an original obligation of the promisor and need not be in writing:

(1) where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise or by one

who has received a discharge from an obligation, in whole or in part, in consideration of such promise;

(2) where the creditor parts with value or enters into an obligation in consideration of the obligation in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor and the person in whose behalf it is made his surety;

(3) where the promise, being for an antecedent obligation of another, is made upon a consideration:

(a) that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor;

(b) that the party receiving it releases the property of another from a levy; or

(c) beneficial to the promisor, whether moving from either party to the antecedent obligation or from another person;

(4) where a factor undertakes to sell merchandise for a commission and guarantee the sale;

(5) where the holder of an instrument for the payment of money upon which a third person is or may become liable to him transfers it in payment of a precedent debt of his own or for a new consideration and in connection with such transfer enters into a promise respecting such instrument.

History: En. Sec. 3612, Civ. C. 1895; re-en. Sec. 5660, Rev. C. 1907; re-en. Sec. 8175, R.C.M. 1921; Cal. Civ. C. Sec. 2794; Field Civ. C. Sec. 1538; re-en. Sec. 8175, R.C.M. 1935; R.C.M. 1947, 30-105.

Cross-References

When contracts may be oral, 28-2-901.

What contracts must be in writing, 28-2-903.

Liability of factor under guaranty commission, 30-11-604.

Assignments for the benefit of creditors, Title 31, ch. 2, part 2.

28-11-106. When notice of acceptance necessary to bind guarantor. A mere offer of guaranty is not binding until notice of its acceptance is communicated by the guarantee to the guarantor, but an absolute guaranty is binding upon the guarantor without notice of acceptance.

History: En. Sec. 3613, Civ. C. 1895; re-en. Sec. 5661, Rev. C. 1907; re-en. Sec. 8176, R.C.M. 1921; Cal. Civ. C. Sec. 2795; Field Civ. C. Sec. 1539; re-en. Sec. 8176, R.C.M. 1935; amd. Sec. 6, Ch. 185, L. 1977; R.C.M. 1947, 30-106.

Cross-References

Construction of the terms of a notice, 1-4-108.

28-11-107. When guaranty considered unconditional. A guaranty is to be deemed unconditional unless its terms import some condition precedent to the liability of the guarantor.

History: En. Sec. 3630, Civ. C. 1895; re-en. Sec. 5666, Rev. C. 1907; re-en. Sec. 8181, R.C.M. 1921; Cal. Civ. C. Sec. 2806; Field Civ. C. Sec. 1544; re-en. Sec. 8181, R.C.M. 1935; R.C.M. 1947, 30-201.

Cross-References

Conditions precedent, Rule 9(c), M.R.Civ.P. (see Title 25, ch. 20).

Condition precedent defined, 28-1-403.

Acceptance to be absolute, 28-2-504.

Liability upon guaranty of conditional obligation — notice of default, 28-11-206.

28-11-108. Continuing guaranty — definition, revocation. (1) A guaranty relating to a future liability of the principal under successive transactions which either continue his liability or from time to time renew it after it has been satisfied is called a continuing guaranty.

(2) A continuing guaranty may be revoked at any time by the guarantor in respect to future transactions unless there is a continuing consideration as to such transactions which he does not renounce.

History: En. Secs. 3640, 3641, Civ. C. 1895; re-en. Secs. 5671, 5672, Rev. C. 1907; re-en. Secs. 8186, 8187, R.C.M. 1921; Cal. Civ. C. Secs. 2814, 2815; Field Civ. C. Secs. 1549, 1550; re-en. Secs. 8186, 8187, R.C.M. 1935; R.C.M. 1947, 30-206, 30-207.

Cross-References

Consideration, Title 28, ch. 2, part 8.

Part 2

Guaranty — Liability and Exoneration of Guarantor

Part Cross-References

Contract of guarantor — commercial paper, 30-3-416.

Liability for nonreceipt or misdescription of goods, 30-7-301.

Liability of factor under guaranty commission, 30-11-604.

28-11-201. Obligation of guarantor not to exceed that of principal. The obligation of a guarantor must be neither larger in amount nor in other respects more burdensome than that of the principal, and if in its terms it exceeds it, it is reducible in proportion to the principal obligation.

History: En. Sec. 3633, Civ. C. 1895; re-en. Sec. 5669, Rev. C. 1907; re-en. Sec. 8184, R.C.M. 1921; Cal. Civ. C. Sec. 2809; Field Civ. C. Sec. 1547; re-en. Sec. 8184, R.C.M. 1935; R.C.M. 1947, 30-204.

Cross-References

Knowledge or consent of principal not required, 28-11-102.

28-11-202. Liability under guaranty of incomplete contract. In a guaranty of a contract the terms of which are not then settled, it is implied that its terms shall be such as will not expose the guarantor to greater risks than he would incur under those terms which are most common in similar contracts at the place where the principal contract is to be performed.

History: En. Sec. 3620, Civ. C. 1895; re-en. Sec. 5662, Rev. C. 1907; re-en. Sec. 8177, R.C.M. 1921; Cal. Civ. C. Sec. 2799; Field. Civ. C. Sec. 1540; re-en. Sec. 8177, R.C.M. 1935; R.C.M. 1947, 30-107.

Cross-References

Interpretation of language according to usage in place of execution, 1-4-106.

What law and usage to govern interpretation, 28-3-102.

28-11-203. Liability under guaranty of illegal contract or contract void against principal. A guarantor is not liable if the contract of the principal is unlawful, but he is liable notwithstanding any mere personal disability of the principal, though the disability be such as to make the contract void against the principal.

History: En. Sec. 3634, Civ. C. 1895; re-en. Sec. 5670, Rev. C. 1907; re-en. Sec. 8185, R.C.M. 1921; Cal. Civ. C. Sec. 2810; Field Civ. C. Sec. 1548; re-en. Sec. 8185, R.C.M. 1935; R.C.M. 1947, 30-205.

Cross-References

When contract wholly void, 28-2-603.

When contract partially void, 28-2-604.

Illegal objects and provisions, Title 28, ch. 2, part 7.

28-11-204. Liability under guaranty that obligation is good or collectable. (1) A guaranty to the effect that an obligation is good or is collectable imports that the debtor is solvent and that the demand is collectable by the usual legal proceedings if taken with reasonable diligence.

(2) A guaranty such as is mentioned in subsection (1) is not discharged by an omission to take proceedings upon the principal debt or upon any collateral security for its payment if no part of the debt could have been collected thereby.

(3) In the case mentioned in subsection (1), the removal of the principal from the state, leaving no property therein from which the obligation might be satisfied, is equivalent to the insolvency of the principal in its effect upon the rights and obligations of the guarantor.

History: En. Secs. 3621, 3622, 3623, Civ. C. 1895; re-en. Secs. 5663, 5664, 5665, Rev. C. 1907; re-en. Secs. 8178, 8179, 8180, R.C.M. 1921; Cal. Civ. C. Secs. 2800, 2801, 2802; Field Civ. C. Secs. 1541, 1542, 1543; re-en. Secs. 8178, 8179, 8180, R.C.M. 1935; R.C.M. 1947, 30-108, 30-109, 30-110.

Cross-References

Prejudgment attachment, Title 27, ch. 18.

Enforcement of contracts, Title 28, ch. 2, part 15.

Insolvency — what constitutes, 31-2-202.

Insolvency defined, 31-2-302.

28-11-205. When guarantor of payment or performance becomes liable. A guarantor of payment or performance is liable to the guarantee immediately upon the default of the principal and without demand or notice.

History: En. Sec. 3631, Civ. C. 1895; re-en. Sec. 5667, Rev. C. 1907; re-en. Sec. 8182, R.C.M. 1921; Cal. Civ. C. Sec. 2807; Field Civ. C. Sec. 1545; re-en. Sec. 8182, R.C.M. 1935; R.C.M. 1947, 30-202.

Cross-References

Illegality of agreement to allow another person to confess judgment, accept service of process, or accept default, 28-2-709.

Debtor and creditor relationships, Title 31, ch. 2.

28-11-206. Liability upon guaranty of conditional obligation — notice of default. Where one guarantees a conditional obligation, his liability is commensurate with that of the principal and he is not entitled to notice of the default of the principal unless he is unable, by the exercise of reasonable diligence, to acquire information of such default and the creditor has actual notice thereof.

History: En. Sec. 3632, Civ. C. 1895; re-en. Sec. 5668, Rev. C. 1907; re-en. Sec. 8183, R.C.M. 1921; Cal. Civ. C. Sec. 2808; Field Civ. C. Sec 1546; re-en. Sec. 8183, R.C.M. 1935; R.C.M. 1947, 30-203.

Cross-References

Notice — actual and constructive, 1-1-217.

Illegality of agreement to allow another person to confess judgment, accept service of process, or accept default, 28-2-709.

When guaranty considered unconditional, 28-11-107.

Creditor defined, 31-2-102.

28-11-207 through 28-11-210 reserved.

28-11-211. When guarantor exonerated. (1) A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor without the consent of the guarantor the original obligation of the principal is altered in any respect or the remedies or rights of the creditor against the principal in respect thereto are in any way impaired or suspended.

(2) A promise by a creditor which for any cause is void or voidable by him at his option does not alter the obligation or suspend or impair the remedy within the meaning of subsection (1).

History: En. Secs. 3650, 3651, Civ. C. 1895; re-en. Secs. 5673, 5674, Rev. C. 1907; re-en. Secs. 8188, 8189, R.C.M. 1921; Cal. Civ. C. Secs. 2819, 2820; Field Civ. C. Secs. 1551, 1552; re-en. Secs. 8188, 8189, R.C.M. 1935; R.C.M. 1947, 30-208, 30-209.

Cross-References

Contracts in restraint of trade generally void, 28-2-703.

What conditions void, 28-2-707.

Restraints upon legal proceedings void, 28-2-708.

Indemnity, Title 28, ch. 11, part 3.

Exoneration of surety, 28-11-412.

Contracts of debtor are valid, 31-2-103.

28-11-212. Rescission of alteration — liability not restored. The rescission of an agreement altering the original obligation of a debtor or impairing the remedy of a creditor does not restore the liability of a guarantor who has been exonerated by such agreement.

History: En. Sec. 3652, Civ. C. 1895; re-en. Sec. 5675, Rev. C. 1907; re-en. Sec. 8190, R.C.M. 1921; Cal. Civ. C. Sec. 2821; Field Civ. C. Sec. 1553; re-en. Sec. 8190, R.C.M. 1935; R.C.M. 1947, 30-210.

Cross-References

Modification of contracts, Title 28, ch. 2, part 16.

Extinction of contracts — rescission, Title 28, ch. 2, part 17.

Assignments for the benefit of creditors, Title 31, ch. 2, part 2.

28-11-213. Guarantor not exonerated by delay of creditor. Mere delay on the part of a creditor to proceed against the principal or to enforce any other remedy does not exonerate a guarantor.

History: En. Sec. 3654, Civ. C. 1895; re-en. Sec. 5677, Rev. C. 1907; re-en. Sec. 8192, R.C.M. 1921; Cal. Civ. C. Sec. 2823; Field Civ. C. Sec. 1555; re-en. Sec. 8192, R.C.M. 1935; R.C.M. 1947, 30-212.

Cross-References

Restraints upon legal proceedings void, 28-2-708.

28-11-214. Guarantor not exonerated by discharge of principal. A guarantor is not exonerated by the discharge of his principal by operation of law without the intervention or omission of the creditor.

History: En. Sec. 3656, Civ. C. 1895; re-en. Sec. 5679, Rev. C. 1907; re-en. Sec. 8194, R.C.M. 1921; Cal. Civ. C. Sec. 2825; Field Civ. C. Sec. 1557; re-en. Sec. 8194, R.C.M. 1935; R.C.M. 1947, 30-214.

28-11-215. Exoneration of guarantor indemnified by principal. A guarantor who has been indemnified by the principal is liable to the creditor to the extent of the indemnity notwithstanding that the creditor, without the assent of the guarantor, may have modified the contract or released the principal.

History: En. Sec. 3655, Civ. C. 1895; re-en. Sec. 5678, Rev. C. 1907; re-en. Sec. 8193, R.C.M. 1921; Cal. Civ. C. Sec. 2824; Field Civ. C. Sec. 1556; re-en. Sec. 8193, R.C.M. 1935; R.C.M. 1947, 30-213.

Cross-References

Release of debtor by creditor, Title 28, ch. 1, part 16.

Indemnity, Title 28, ch. 11, part 3.

28-11-216. Effect of part performance on guarantor's liability. The acceptance by a creditor of anything in partial satisfaction of an obligation reduces the obligation of a guarantor thereof in the same measure as that of the principal but does not otherwise affect it.

History: En. Sec. 3653, Civ. C. 1895; re-en. Sec. 5676, Rev. C. 1907; re-en. Sec. 8191, R.C.M. 1921; Cal. Civ. C. Sec. 2822; Field Civ. C. Sec. 1554; re-en. Sec. 8191, R.C.M. 1935; R.C.M. 1947, 30-211.

Cross-References

When partial performance extinguishes part of obligation, 28-1-1105.

Offer of partial performance ineffective, 28-1-1203.

When part performance extinguishes obligation, 28-1-1403.

Part 3

Indemnity

Part Cross-References

Indemnity for retention of agency money, 17-2-202.

When no indemnity required in issuing duplicate warrant, 17-8-306.

U.C.C. — letters of credit — indemnities, 30-5-113.

Indemnity for inaccuracies in bills of lading, 30-7-301.

Indemnity for registration of investment securities, 30-8-403, 30-8-405.

Foreclosure of security interests in personal property, 30-9-508.

Corporations — general powers, 35-1-108.

Powers of nonprofit corporations — indemnity, 35-2-107(14).

Powers of religious corporations sole — indemnity, 35-3-205(14).

Depositor to indemnify depositary, 70-6-210.

28-11-301. Indemnity defined. Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties or of some other person.

History: En. Sec. 3580, Civ. C. 1895; re-en. Sec. 5648, Rev. C. 1907; re-en. Sec. 8163, R.C.M. 1921; Cal. Civ. C. Sec. 2772; Field Civ. C. Sec. 1524; re-en. Sec. 8163, R.C.M. 1935; R.C.M. 1947, 30-301.

Cross-References

Guaranty defined, 28-11-101.

28-11-302. Indemnity for future unlawful act void. An agreement to indemnify a person against an act thereafter to be done is void if the act be known by such person, at the time of doing it, to be unlawful.

History: En. Sec. 3581, Civ. C. 1895; re-en. Sec. 5649, Rev. C. 1907; re-en. Sec. 8164, R.C.M. 1921; Cal. Civ. C. Sec. 2773; Field Civ. C. Sec. 1525; re-en. Sec. 8164, R.C.M. 1935; R.C.M. 1947, 30-302.

Cross-References

When contract wholly void, 28-2-603.

When contract partially void, 28-2-604.

28-11-303. Indemnity for past wrongful act valid. An agreement to indemnify a person against an act already done is valid, even though the act was known to be wrongful, unless it was a felony.

History: En. Sec. 3582, Civ. C. 1895; re-en. Sec. 5650, Rev. C. 1907; re-en. Sec. 8165, R.C.M. 1921; Cal. Civ. C. Sec. 2774; Field Civ. C. Sec. 1526; re-en. Sec. 8165, R.C.M. 1935; R.C.M. 1947, 30-303.

Cross-References

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

28-11-304. Indemnity extended to acts of agents. An agreement to indemnify against the acts of a certain person applies not only to his acts and their consequences but also to those of his agents.

History: **En. Sec. 3583, Civ. C. 1895; re-en. Sec. 5651, Rev. C. 1907; re-en. Sec. 8166, R.C.M. 1921; Cal. Civ. C. Sec. 2775; Field Civ. C. Sec. 1527; re-en. Sec. 8166, R.C.M. 1935; R.C.M. 1947, 30-304.**

Cross-References

Accrual of rights and liabilities to principal, 28-10-601.

Exoneration of guarantor indemnified by principal, 28-11-215.

Authority of factor, 30-11-606.

Indemnification of employee, 39-2-701.

Liability of assisted entity for obligation resulting from assistance, 44-11-102.

28-11-305. Indemnification of several persons. An agreement to indemnify several persons applies to each unless a contrary intention appears.

History: **En. Sec. 3584, Civ. C. 1895; re-en. Sec. 5652, Rev. C. 1907; re-en. Sec. 8167, R.C.M. 1921; Cal. Civ. C. Sec. 2776; Field Civ. C. Sec. 1528; re-en. Sec. 8167, R.C.M. 1935; R.C.M. 1947, 30-305.**

Cross-References

Indemnity of partners, 35-10-401.

Indemnification of employee, 39-2-701.

28-11-306 through 28-11-310 reserved.

28-11-311. Person indemnifying liable jointly and severally. Except as provided in 27-1-703, one who indemnifies another against an act to be done by the latter is liable jointly with the person indemnified and separately to every person injured by such act.

History: **En. Sec. 3585, Civ. C. 1895; re-en. Sec. 5653, Rev. C. 1907; re-en. Sec. 8168, R.C.M. 1921; Cal. Civ. C. Sec. 2777; Field Civ. C. Sec. 1529; re-en. Sec. 8168, R.C.M. 1935; R.C.M. 1947, 30-306; amd. Sec. 5, Ch. 253, L. 1987.**

Compiler's Comments

1987 Amendment: At beginning inserted exception clause.

Cross-References

Liability of joint debtors, Title 25, ch. 15.

Multiple defendants jointly and severally liable — right of contribution, 27-1-703.

Joint obligations, Title 28, ch. 1, part 3.

Indemnity for enforcement of agisters' lien, 71-3-1203.

28-11-312. When person indemnifying entitled to reimbursement. Where one at the request of another engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, he is entitled to be reimbursed in the same manner as a surety for whatever he may pay.

History: **En. Sec. 3587, Civ. C. 1895; re-en. Sec. 5655, Rev. C. 1907; re-en. Sec. 8170, R.C.M. 1921; Cal. Civ. C. Sec. 2779; Field Civ. C. Sec. 1531; re-en. Sec. 8170, R.C.M. 1935; R.C.M. 1947, 30-308.**

Cross-References

Liability of joint debtors, Title 25, ch. 15.

Right to contribution from joint debtors, 28-1-303.

Indemnity in winding up partnership, 35-10-610, 35-10-611.

28-11-313. Interpretation of contract of indemnity. In the interpretation of a contract of indemnity, the rules prescribed in 28-11-314 through 28-11-317 are to be applied unless a contrary intention appears.

History: **En. Sec. 3586, Civ. C. 1895; re-en. Sec. 5654, Rev. C. 1907; re-en. Sec. 8169, R.C.M. 1921; Cal. Civ. C. Sec. 2778; Field Civ. C. Sec. 1530; re-en. Sec. 8169, R.C.M. 1935; R.C.M. 1947, 30-307(part).**

Cross-References

Interpretation of instruments, Title 1, ch. 4, part 1.

Interpretation of contracts, Title 28, ch. 3.

28-11-314. When and what person indemnified entitled to recover. (1) Upon an indemnity against liability, expressly or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable.

(2) Upon an indemnity against claims, demands, damages, or costs, expressly or in other equivalent terms, the person indemnified is not entitled to recover without payment thereof.

History: En. Sec. 3586, Civ. C. 1895; re-en. Sec. 5654, Rev. C. 1907; re-en. Sec. 8169, R.C.M. 1921; Cal. Civ. C. Sec. 2778; Field Civ. C. Sec. 1530; re-en. Sec. 8169, R.C.M. 1935; R.C.M. 1947, 30-307(1), (2).

Cross-References

When guarantor of payment or performance becomes liable, 28-11-205.

Building and loan associations — requirements of transfer in certain cases, 32-2-212.

28-11-315. Costs of defense. An indemnity against claims, demands, or liability, expressly or in other equivalent terms, embraces the costs of defense against such claims, demands, or liability incurred in good faith and in the exercise of a reasonable discretion.

History: En. Sec. 3586, Civ. C. 1895; re-en. Sec. 5654, Rev. C. 1907; re-en. Sec. 8169, R.C.M. 1921; Cal. Civ. C. Sec. 2778; Field Civ. C. Sec. 1530; re-en. Sec. 8169, R.C.M. 1935; R.C.M. 1947, 30-307(3).

Cross-References

Costs, Title 25, ch. 10.

28-11-316. Duty of person indemnifying to defend. The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity, but the person indemnified has the right to conduct such defenses if he chooses to do so. If after request the person indemnifying neglects to defend the person indemnified, a recovery against the latter suffered by him in good faith is conclusive in his favor against the former.

History: En. Sec. 3586, Civ. C. 1895; re-en. Sec. 5654, Rev. C. 1907; re-en. Sec. 8169, R.C.M. 1921; Cal. Civ. C. Sec. 2778; Field Civ. C. Sec. 1530; re-en. Sec. 8169, R.C.M. 1935; R.C.M. 1947, 30-307(4), (5).

28-11-317. When judgment not conclusive against person indemnifying. (1) If the person indemnifying, whether he is a principal or a surety in the agreement, does not have reasonable notice of the action or proceeding against the person indemnified or is not allowed to control his defense, judgment against the latter is only presumptive evidence against the former.

(2) A stipulation that a judgment against the person indemnified shall be conclusive upon the person indemnifying is inapplicable if he had a good defense upon the merits which by want of ordinary care he failed to establish in the action.

History: En. Sec. 3586, Civ. C. 1895; re-en. Sec. 5654, Rev. C. 1907; re-en. Sec. 8169, R.C.M. 1921; Cal. Civ. C. Sec. 2778; Field Civ. C. Sec. 1530; re-en. Sec. 8169, R.C.M. 1935; R.C.M. 1947, 30-307(6), (7).

Cross-References

Execution of judgment, Title 25, ch. 13.

Evidence — presumptions, Title 26, ch. 1, part 6.

Rules of evidence — presumptions in general, Rule 301, Montana Rules of Evidence (see Title 26, ch. 10).

Exoneration of guarantor indemnified by principal, 28-11-215.

Part 4

Suretyship

Part Cross-References

Security for deposits of public funds, 17-6-103.

Public contracts — bid security, Title 18, ch. 1, part 2.

Public construction contracts — bonding requirements, 18-2-201.

Security for costs — civil procedure, Title 25, ch. 10, part 6.

Undertaking for costs on appeal, Rule 6, M.R.App.P. (see Title 25, ch. 21).

Justification of sureties, 25-33-203.

Qualifications of sureties — bail, 27-16-403.

Liability and exoneration of sureties — bail, Title 27, ch. 16, part 5.

Prejudgment attachment — exceptions to plaintiff's sureties, 27-18-715.

Prejudgment attachment — justification of sureties, 27-18-716.

Prejudgment attachment — defendant's undertaking — justification of sureties, 27-18-722.

Surety insurance, 33-1-211; Title 33, ch. 26.

Security for construction lien, 71-3-551.

28-11-401. Surety defined. A surety is one who, at the request of another and for the purpose of securing to him a benefit, becomes responsible for the performance by the latter of some act in favor of a third person or hypothecates property as security therefor.

History: En. Sec. 3670, Civ. C. 1895; re-en. Sec. 5680, Rev. C. 1907; re-en. Sec. 8195, R.C.M. 1921; Cal. Civ. C. Sec. 2831; Field Civ. C. Sec. 1558; re-en. Sec. 8195, R.C.M. 1935; R.C.M. 1947, 30-401.

Cross-References

Guaranty defined, 28-11-101.

U.C.C. — general definitions — "surety", 30-1-201(40).

28-11-402. When apparent principal may show he is a surety. One who appears to be a principal, whether by the terms of a written instrument or otherwise, may show that he is in fact a surety except as against persons who have acted on the faith of his apparent character of principal.

History: En. Sec. 3671, Civ. C. 1895; re-en. Sec. 5681, Rev. C. 1907; re-en. Sec. 8196, R.C.M. 1921; Cal. Civ. C. Sec. 2832; Field Civ. C. Sec. 1559; re-en. Sec. 8196, R.C.M. 1935; R.C.M. 1947, 30-402.

Cross-References

When agent responsible to third persons as a principal, 28-10-702.

When guaranty considered original obligation and need not be in writing, 28-11-105.

28-11-403. Interpretation of contract of suretyship. In interpreting the terms of a contract of suretyship, the same rules are to be observed as in the case of other contracts.

History: En. Sec. 3681, Civ. C. 1895; re-en. Sec. 5683, Rev. C. 1907; re-en. Sec. 8198, R.C.M. 1921; Cal. Civ. C. Sec. 2837; Field Civ. C. Sec. 1561; re-en. Sec. 8198, R.C.M. 1935; R.C.M. 1947, 30-404.

Cross-References

Interpretation of instruments, Title 1, ch. 4.

What rules govern interpretation of contracts and other obligations, 28-1-103.

Interpretation of contracts, Title 28, ch. 3.

28-11-404. Suretyship unaffected by judgment against surety. Notwithstanding the recovery of judgment by a creditor against a surety, the latter still occupies the relation of surety.

History: En. Sec. 3682, Civ. C. 1895; re-en. Sec. 5684, Rev. C. 1907; re-en. Sec. 8199, R.C.M. 1921; Cal. Civ. C. Sec. 2838; Field Civ. C. Sec. 1562; re-en. Sec. 8199, R.C.M. 1935; R.C.M. 1947, 30-405.

Cross-References

Judgment, Title 25, ch. 9; Rules 54 through 62, M.R.Civ.P. (see Title 25, ch. 20).

Principal bound when surety bound, 26-3-104.

When guarantor of payment or performance becomes liable, 28-11-205.

28-11-405 through 28-11-410 reserved.

28-11-411. Extent of surety's liability. A surety cannot be held beyond the express terms of his contract, and if such contract prescribes a penalty for its breach, he cannot in any case be liable for more than the penalty.

History: En. Sec. 3680, Civ. C. 1895; re-en. Sec. 5682, Rev. C. 1907; re-en. Sec. 8197, R.C.M. 1921; Cal. Civ. C. Sec. 2836; Field Civ. C. Sec. 1560; re-en. Sec. 8197, R.C.M. 1935; R.C.M. 1947, 30-403.

Cross-References

Notification to surety by Legislative Auditor, 5-13-304.

Public contracts — bond requirements, Title 18, ch. 2, part 2.

Breach of contract, 27-1-311.

Obligation of guarantor not to exceed that of principal, 28-11-201.

Highway contracts — bidder's security, 60-2-113.

28-11-412. Exoneration of surety. A surety is exonerated:

(1) in like manner with a guarantor;

(2) to the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights or which lessens his security; or

(3) to the extent to which he is prejudiced by an omission of the creditor, when required by the surety, to do anything which it is the creditor's duty to do.

History: En. Sec. 3684, Civ. C. 1895; re-en. Sec. 5686, Rev. C. 1907; re-en. Sec. 8201, R.C.M. 1921; Cal. Civ. C. Sec. 2840; Field Civ. Sec. 1564; re-en. Sec. 8201, R.C.M. 1935; amd. Sec. 8, Ch. 185, L. 1977; R.C.M. 1947, 30-407.

Cross-References

Exoneration of guarantor, 28-11-211.

28-11-413. Effect of performance or offer of performance on surety's liability. Performance of the principal obligation or an offer of such performance, duly made as provided in this code, exonerates a surety.

History: En. Sec. 3683, Civ. C. 1895; re-en. Sec. 5685, Rev. C. 1907; re-en. Sec. 8200, R.C.M. 1921; Cal. Civ. C. Sec. 2839; Based on Field Civ. C. Sec. 1563; re-en. Sec. 8200, R.C.M. 1935; R.C.M. 1947, 30-406.

Cross-References

Extinction of obligation by offer of performance, Title 28, ch. 1, part 12.

Effect of part performance on guarantor's liability, 28-11-216.

28-11-414. Application to surety of rights of guarantor. A surety has all the right of a guarantor, whether he becomes personally responsible or not.

History: En. Sec. 3690, Civ. C. 1895; re-en. Sec. 5687, Rev. C. 1907; re-en. Sec. 8202, R.C.M. 1921; Cal. Civ. C. Sec. 2844; Field Civ. C. Sec. 1565; re-en. Sec. 8202, R.C.M. 1935; R.C.M. 1947, 30-501.

Cross-References

Guaranty, Title 28, ch. 11, parts 1 and 2.

28-11-415. Power of surety to compel principal to perform. A surety may compel his principal to perform the obligations when due.

History: En. Sec. 3692, Civ. C. 1895; re-en. Sec. 5689, Rev. C. 1907; re-en. Sec. 8204, R.C.M. 1921; Cal. Civ. C. Sec. 2846; Field Civ. C. Sec. 1567; re-en. Sec. 8204, R.C.M. 1935; R.C.M. 1947, 30-503.

Cross-References

When guarantor of payment or performance becomes liable, 28-11-205.

28-11-416. When surety may require creditor to pursue remedy. A surety may require his creditor to proceed against the principal or to pursue any other remedy in his power which the surety cannot himself pursue and which would lighten his burden, and if in such case the creditor neglects to do so, the surety is exonerated to the extent to which he is thereby prejudiced.

History: En. Sec. 3691, Civ. C. 1895; re-en. Sec. 5688, Rev. C. 1907; re-en. Sec. 8203, R.C.M. 1921; Cal. Civ. C. Sec. 2845; Field Civ. C. Sec. 1566; re-en. Sec. 8203, R.C.M. 1935; R.C.M. 1947, 30-502.

Cross-References

Guarantor not exonerated by discharge of principal, 28-11-214.

28-11-417. Surety's right to reimbursement and contribution. (1) If a surety satisfies the principal obligation or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what the surety has disbursed, including necessary costs and expenses, but the surety has no claim for reimbursement against other persons, though they may have been benefited by his act, except as prescribed by subsection (2).

(2) A surety, upon satisfying the obligation of the principal, is entitled to enforce every remedy which the creditor then has against the principal to the extent of reimbursing what the surety has expended and also to require all his cosureties to contribute thereto without regard to the order of time in which they became such.

History: En. Secs. 3693, 3694, Civ. C. 1895; re-en. Secs. 5690, 5691, Rev. C. 1907; re-en. Secs. 8205, 8206, R.C.M. 1921; Cal. Civ. C. Secs. 2847, 2848; Field Civ. C. Secs. 1568, 1569; re-en. Secs. 8205, 8206, R.C.M. 1935; R.C.M. 1947, 30-504, 30-505.

Cross-References

Compelling contribution or repayment — joint debtor, surety, 25-13-104.

Subrogation of surety on appeal bond, 25-13-105.

28-11-418. Surety entitled to benefit of security held by creditor or cosurety. A surety is entitled to the benefit of every security for the performance of the principal obligation held by the creditor or by a cosurety at the time of entering into the contract of suretyship or acquired by him afterwards, whether the surety was aware of the security or not.

History: En. Sec. 3695, Civ. C. 1895; re-en. Sec. 5692, Rev. C. 1907; re-en. Sec. 8207, R.C.M. 1921; Cal. Civ. C. Sec. 2849; Field Civ. C. Sec. 1570; re-en. Sec. 8207, R.C.M. 1935; R.C.M. 1947, 30-506.

28-11-419. Creditor entitled to benefit of security held by surety. A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation and may, upon the maturity of the obligation, compel the application of such security to its satisfaction.

History: En. Sec. 3700, Civ. C. 1895; re-en. Sec. 5694, Rev. C. 1907; re-en. Sec. 8209, R.C.M. 1921; Cal. Civ. C. Sec. 2854; Field Civ. C. Sec. 1572; re-en. Sec. 8209, R.C.M. 1935; R.C.M. 1947, 30-508.

28-11-420. Principal's property to be taken first. Whenever property of a surety is hypothecated with property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation.

History: En. Sec. 3696, Civ. C. 1895; re-en. Sec. 5693, Rev. C. 1907; re-en. Sec. 8208, R.C.M. 1921; Cal. Civ. C. Sec. 2850; Field Civ. C. Sec. 1571; re-en. Sec. 8208, R.C.M. 1935; R.C.M. 1947, 30-507.

Cross-References

Guarantor not exonerated by discharge of principal, 28-11-214.

TITLE 29

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